

7-25-2011

Marek v. Lawrence Clerk's Record Dckt. 38827

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LAW CLERK

In the
SUPREME COURT
of the
STATE OF IDAHO

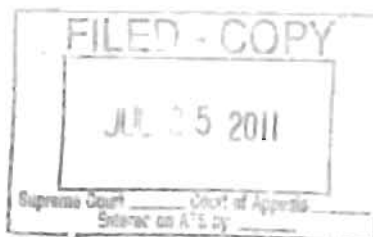
Vol. 1 of 2

FRANK MAREK & GAYLE MAREK,
Petitioner-Appellant,

v.

EARL LAWRENCE & SANDRA LAWRENCE,

Respondents-Respondents,



Appealed from the District Court of the Second
Judicial District of the State of Idaho, in and
for Clearwater County

Honorable MICHAEL J. GRIFFIN, District Judge

PAUL THOMAS CLARK
Attorney for Petitioner-Appellant

MARK SNYDER
Attorney for Respondents-Respondents

38827

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

FRANK RONALD MAREK AND GAYLE)	
MAREK, husband and wife,)	
)	
Petitioner-Appellant,)	SUPREME COURT NO. 38827
)	
vs.)	
)	CLERK'S CERTIFICATE
EARL A. LAWRENCE AND SANDRA L.)	
LAWRENCE, husband and wife,)	
)	
)	
Respondents-Respondents)	
On Appeal,)	

I, Courtney Stifanick, Deputy Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Clearwater, do hereby certify that the foregoing Clerk's Record in the above-entitled cause was compiled and bound by me and contains true and correct copies of all pleadings, documents, and papers designated to be included under Rule 28, Idaho Appellate Rules, the Notice of Appeal, any Notice of Cross-Appeal, and additional documents that were requested.

I further certify:

1. That all documents, x-rays, charts, and pictures offered or admitted as exhibits in the above-entitled cause, if any, will be duly lodged with the Clerk of the Supreme Court with any Reporter's Transcript and the Clerk's. The above exhibits will be retained in the possession of the

CLERK'S CERTIFICATE

undersigned, as required by Rule 31 of the Idaho Appellate Rules.

2. That the following will be submitted as a confidential exhibit to the record:

Plat of the Hays Road dated September 7, 2010

Map of Land dated September 7, 2010

Map of Land and Roads date September 7, 2010

Picture of Land and Road dated September 7, 2010

Warranty Deed dates September 7, 2010

Two Pictures of Fence Line dates November 24, 2008

24 x 24 Map of Property Lines dates November 24, 2008

Hand Drawn Map dates November 24, 2008

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said court this 23rd day of June 2011.



CARRIE BIRD, Clerk

By Courtney Stifanick
Deputy Clerk

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

FRANK MAREK and GAYLE MAREK,)	
)	
Petitioner-Appellant,)	SUPREME COURT NO. 38827
)	
v.)	TABLE OF CONTENTS
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)	
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IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

FRANK MAREK and GAYLE MAREK,)	
)	
Petitioner-Appellant,)	SUPREME COURT NO. 38827
)	
)	
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Date: 6/10/2011

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Case: CV-2008-0000392 Current Judge: Michael J Griffin

Frank Ronald Marek, etal. vs. Earl A Lawrence, etal.

Frank Ronald Marek, Gayle A Marek vs. Earl A Lawrence, Sandra L Lawrence, Robert C Johnson, Sandi Worthington

Date	Code	User	Judge
10/2/2008	NCOC	MICHELLE	New Case Filed - Other Claims
	APER	MICHELLE	Plaintiff: Marek, Frank Ronald Appearance Paul Thomas Clark
	APER	MICHELLE	Plaintiff: Marek, Gayle Appearance Paul Thomas Clark
	APER	MICHELLE	Plaintiff: Worthington, Sandi Appearance Paul Thomas Clark
		MICHELLE	Filing: A - Civil Complaint for more than \$1,000.00 Paid by: Clark, Paul Thomas (attorney for Marek, Frank Ronald) Receipt number: 0003434 Dated: 10/20/2008 Amount: \$88.00 (Cashiers Check) For: Marek, Frank Ronald (plaintiff)
10/20/2008	AFFD	MICHELLE	Affidavit For Publication Of Summons- All Persons Unknown
	LISP	MICHELLE	Lis Pendens
	SMIS	MICHELLE	Summons Issued
	SMIS	MICHELLE	Summons Issued
10/27/2008	ORDR	SUE	Order for publication of summons
	MOTN	MICHELLE	Ex Parte Motion For Temporary Restraining Order And/Or Motion For Temporary Restraining Order Or Preliminary Injunction
	AFFD	MICHELLE	Affidavit In Support Of Motion For Temporary Restraining Order
	TRO	SUE	Temporary Restraining Order Issued
	ORDR	SUE	Order for temporary restraining order and/or preliminary injunction
10/29/2008	HRSC	SUE	Hearing Scheduled (Hearing Scheduled 11/10/2008 04:00 PM) TRO and/or preliminary injunction
	ACKS	CHRISTY	Acknowledgement Of Service
10/30/2008	APER	BARBIE	Defendant: Lawrence, Earl A Appearance Mark S. Snyder
	APER	BARBIE	Defendant: Lawrence, Sandra L Appearance Mark S. Snyder
		BARBIE	Filing: I7 - All Other Cases Paid by: Snyder, Mark S. (attorney for Lawrence, Earl A) Receipt number: 0003564 Dated: 10/30/2008 Amount: \$58.00 (Cashiers Check) For: Lawrence, Earl A (defendant)
	APER	VICKY	Defendant: Worthington, Sandi Appearance Mark S. Snyder
	APER	VICKY	Defendant: Johnson, Robert C Appearance Mark S. Snyder
10/31/2008	REQT	SUE	Request for trial setting

Date: 6/10/2011

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Case: CV-2008-0000392 Current Judge: Michael J Griffin

Frank Ronald Marek, etal. vs. Earl A Lawrence, etal.

Frank Ronald Marek, Gayle A Marek vs. Earl A Lawrence, Sandra L Lawrence, Robert C Johnson, Sandi Worthington

Date	Code	User		Judge
10/31/2008	NOSV	SUE	Notice Of Service	John H. Bradbury
	AFSV	SUE	Affidavit Of Service	John H. Bradbury
11/3/2008	RECO	SUE	Reply To Counterclaim	John H. Bradbury
11/5/2008	ORDR	SUE	Order for pretrial scheduling conference	John H. Bradbury
	HRSC	SUE	Hearing Scheduled (Telephonic Scheduling Conference 01/05/2009 02:30 PM)	John H. Bradbury
11/7/2008	MEMO	CHRISTY	Memorandum Regarding Preliminary Injunction Hearing	John H. Bradbury
	MEMO	SUE	Memorandum in opposition to plaintiffs' motion for preliminary injunction and in support of defendants' motion for summary judgment	John H. Bradbury
	AFFD	SUE	Affidavit of Albert Lawrence in support motion or preliminary injunction and motion for summary judgment	John H. Bradbury
	AFFD	SUE	Affidavit of Earl Lawrence in support motion for preliminary injunction and motion for summary judgment	John H. Bradbury
	AFFD	SUE	Affidavit of Arlie Armitage in support motion for preliminary injunction and motion for summary judgment	John H. Bradbury
	AFFD	SUE	Affidavit of Mary Ann Pavel in support motion for preliminary in junction and motion for summary judgment	John H. Bradbury
11/10/2008	CONT	SUE	Continued (Hearing Scheduled 11/24/2008 03:30 PM) TRO and/or preliminary injunction	John H. Bradbury
		SUE	Notice Of Hearing	John H. Bradbury
	AFFD	SUE	Affidavit of Terry Golding in Support of Motion for Summary Judgment	John H. Bradbury
11/21/2008	AFFP	SUE	Affidavit Of Publication	John H. Bradbury
11/24/2008	HRHD	CHRISTY	Hearing result for Hearing Scheduled held on 11/24/2008 03:30 PM: Hearing Held TRO and/or preliminary injunction	John H. Bradbury
	CMIN	CHRISTY	Court Minutes Hearing type: Motion for Preliminary Injunction Hearing date: 11/24/2008 Time: 3:36 pm Court reporter: Keith Evans Audio tape number: CD	John H. Bradbury
	DCHH	CHRISTY	District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for hearing estimated: LESS THAN 100	John H. Bradbury
	EXLT	CHRISTY	Exhibit List	John H. Bradbury
	SMRT	VICKY	Summons Returned: Earl A. Lawrence & Sandra L. Lawrence	John H. Bradbury
	SMRT	VICKY	Summons Returned: All Persons Unknown	John H. Bradbury

Date: 6/10/2011

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Case: CV-2008-0000392 Current Judge: Michael J Griffin

Frank Ronald Marek, etal. vs. Earl A Lawrence, etal.

Frank Ronald Marek, Gayle A Marek vs. Earl A Lawrence, Sandra L Lawrence, Robert C Johnson, Sandi Worthington

Date	Code	User		Judge
12/8/2008	PPCM	SUE	Plaintiff's Pretrial Compliance	John H. Bradbury
	ORDR	CHRISTY	Preliminary Injunction	John H. Bradbury
12/29/2008	PPCM	SUE	Plaintiff's Pretrial Compliance	John H. Bradbury
1/5/2009	HRHD	DIANE	Hearing result for Telephonic Scheduling Conference held on 01/05/2009 02:30 PM: Hearing Held	John H. Bradbury
	HRSC	DIANE	Hearing Scheduled (Jury Trial 06/22/2009 08:30 AM)	John H. Bradbury
	HRSC	DIANE	Hearing Scheduled (Pretrial Conference 06/08/2009 03:00 PM)	John H. Bradbury
1/7/2009	SCHE	DIANE	Scheduling Order	John H. Bradbury
1/16/2009	MOTN	SUE	Motion for contempt	John H. Bradbury
	AFFD	SUE	Affidavit of Frank Marek in Support of Motion for Contempt	John H. Bradbury
	MISC	SUE	Defendants' pretrial compliance	John H. Bradbury
	NOSV	SUE	Notice Of Service	John H. Bradbury
1/20/2009	MOTN	SUE	Motion for summary judgment	John H. Bradbury
	NOTH	SUE	Notice Of Hearing	John H. Bradbury
	HRSC	SUE	Hearing Scheduled (Motion for Summary Judgment 04/20/2009 04:00 PM)	John H. Bradbury
1/23/2009	OSCI	SUE	Order To Show Cause Issued	John H. Bradbury
	HRSC	SUE	Hearing Scheduled (Order to Show Cause 02/02/2009 01:00 PM)	John H. Bradbury
1/29/2009	AFFD	SUE	Affidavit of Ben Johnson	John H. Bradbury
	AFFD	SUE	Affidavit of Eal Lawrence in support of response to Plaintiffs' motion for contempt	John H. Bradbury
	RESP	SUE	Response to Motion for Contempt	John H. Bradbury
2/2/2009	AFFD	SUE	Affidavit of Earl Lawrence in support of response to plaintiffs' motion for contempt	John H. Bradbury
	HRVC	SUE	Hearing result for Order to Show Cause held on 02/02/2009 01:00 PM: Hearing Vacated	John H. Bradbury
2/5/2009	HRSC	SUE	Hearing Scheduled (Evidentiary 03/24/2009 10:00 AM)	John H. Bradbury
	NOTH	SUE	Notice Of Hearing	John H. Bradbury
2/17/2009	AFSV	SUE	Affidavit Of Service	John H. Bradbury
3/20/2009	STIP	SUE	Stipulated Motion to Continue hearings	John H. Bradbury
3/23/2009	ORDR	SUE	Order to continue hearings	John H. Bradbury
	CONT	SUE	Continued (Motion for Summary Judgment 04/21/2009 11:00 AM)	John H. Bradbury
	CONT	SUE	Continued (Evidentiary 04/21/2009 11:00 AM)	John H. Bradbury
4/7/2009	MEMO	SUE	Memorandum in opposition to motion for summary judgment	John H. Bradbury

Date: 6/10/2011

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Case: CV-2008-0000392 Current Judge: Michael J Griffin

Frank Ronald Marek, etal. vs. Earl A Lawrence, etal.

Frank Ronald Marek, Gayle A Marek vs. Earl A Lawrence, Sandra L Lawrence, Robert C Johnson, Sandi Worthington

Date	Code	User		Judge
4/7/2009	MOTN	SUE	Motion to extend time to respond to defendants' motion for summary judgment	John H. Bradbury
	NOTH	SUE	Notice Of Hearing	John H. Bradbury
4/9/2009	AFFD	SUE	Affidavit of Mellisa Stewart	John H. Bradbury
4/14/2009	MEMO	SUE	Reply memorandum in support of defendnats' motion for summary judgment	John H. Bradbury
	AFFD	SUE	Affidavit of Ben Johnson	John H. Bradbury
4/15/2009	AFFD	SUE	Second Affidavit of Mellisa Stewart	John H. Bradbury
4/21/2009	CMIN	SUE	Court Minutes	John H. Bradbury
	DCHH	SUE	District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for hearing estimated: LESS THAN 100	John H. Bradbury
	HRHD	SUE	Hearing result for Motion for Summary Judgment held on 04/21/2009 11:00 AM: Hearing Held	John H. Bradbury
	HRHD	SUE	Hearing result for Evidentiary held on 04/21/2009 11:00 AM: Hearing Held	John H. Bradbury
5/18/2009	MOTN	CHRISTY	Motion For Leave to File Amended Complaint	John H. Bradbury
	NOTC	CHRISTY	Notice of Hearing	John H. Bradbury
	HRSC	CHRISTY	Hearing Scheduled (Motin For Leave to File Ameded Complaint 06/01/2009 03:30 AM)	John H. Bradbury
5/19/2009	MOTN	SUE	Amended Motion to Leave to File Amended Complaint	John H. Bradbury
	MOTN	SUE	Motion to continue trial	John H. Bradbury
	NOTH	SUE	Notice Of Hearing	John H. Bradbury
5/27/2009	MEMO	SUE	Memorandum Decision and Order	John H. Bradbury
	SCAN	SUE	Scanned:	John H. Bradbury
5/29/2009	STIP	VICKY	Stipulation 1: Allowing Plaintiffs to File Amended Complaint 2: To Continue Trial	John H. Bradbury
6/1/2009	HRVC	VICKY	Hearing result for Motin For Leave to File Ameded Complaint held on 06/01/2009 03:30 AM: Hearing Vacated	John H. Bradbury
	HRVC	VICKY	Hearing result for Jury Trial held on 06/22/2009 08:30 AM: Hearing Vacated	John H. Bradbury
	HRVC	VICKY	Hearing result for Pretrial Conference held on 06/08/2009 03:00 PM: Hearing Vacated	John H. Bradbury
6/2/2009	ORDR	VICKY	Order: 1) Allowing Plaintiffs To File Amended Complaint 2) To Continue Trial	John H. Bradbury
6/9/2009	AMCO	SUE	Amended Complaint Filed	John H. Bradbury
6/15/2009	SMIS	SUE	Summons Issued - Sandi Worthington	John H. Bradbury
7/9/2009	ACCS	RENEE	Acceptance Of Service-defendant Sandi Worthington	John H. Bradbury

Date: 6/10/2011

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Case: CV-2008-0000392 Current Judge: Michael J Griffin

Frank Ronald Marek, etal. vs. Earl A Lawrence, etal.

Frank Ronald Marek, Gayle A Marek vs. Earl A Lawrence, Sandra L Lawrence, Robert C Johnson, Sandi Worthington

Date	Code	User		Judge
7/10/2009	MISC	SUE	Pretrial order	John H. Bradbury
7/29/2009	HRSC	SUE	Hearing Scheduled (Telephonic Status Conference 09/14/2009 04:00 PM)	John H. Bradbury
		SUE	Notice Of Hearing	John H. Bradbury
9/14/2009	HRHD	SUE	Hearing result for Telephonic Status Conference held on 09/14/2009 04:00 PM: Hearing Held	John H. Bradbury
	ORDR	SUE	Order for mediation	John H. Bradbury
10/22/2009	MOTN	SUE	Motion for contempt	John H. Bradbury
	AFFD	SUE	Affidavit of Frank Marek in support of Motion for contempt	John H. Bradbury
11/2/2009	ORDR	SUE	Order to Appear to Answer to the Charge of Contempt	John H. Bradbury
11/3/2009	HRSC	SUE	Hearing Scheduled (Contempt Hearing 11/23/2009 02:30 PM)	John H. Bradbury
11/23/2009	HRVC	SUE	Hearing result for Contempt Hearing held on 11/23/2009 02:30 PM: Hearing Vacated	John H. Bradbury
	STIP	SUE	Stipulation to continue hearing to answer to the charge contempt	John H. Bradbury
	HRSC	SUE	Hearing Scheduled (Contempt Hearing 12/21/2009 01:00 PM)	John H. Bradbury
11/24/2009		SUE	Notice Of Hearing	John H. Bradbury
12/11/2009	MISC	SUE	Denial of charge of contempt	John H. Bradbury
	MISC	SUE	Denial of charge of contempt	John H. Bradbury
	HRVC	SUE	Hearing result for Contempt Hearing held on 12/21/2009 01:00 PM: Hearing Vacated	John H. Bradbury
3/19/2010	HRSC	SUE	Hearing Scheduled (Telephonic Status Conference 04/02/2010 09:30 AM)	John H. Bradbury
		SUE	Notice Of Hearing	John H. Bradbury
4/2/2010	FTAH	CHRISTY	Hearing result for Telephonic Status Conference held on 04/02/2010 09:30 AM: Failure To Appear For Hearing Or Trial (OFF RECORD)	John H. Bradbury
4/13/2010	MOTN	CAROLYNN	Motion For Leave To File Second Amended Complaint	John H. Bradbury
	NOHG	CAROLYNN	Notice Of Hearing	John H. Bradbury
	HRSC	CAROLYNN	Hearing Scheduled (Motin For Leave to File Ameded Complaint 06/14/2010 10:00 AM) Motion for Leave to File Second Amended Complaint	John H. Bradbury
4/23/2010	SCOR	COURTNEY	Scheduling Order	John H. Bradbury
	HRSC	COURTNEY	Hearing Scheduled (Jury Trial 09/07/2010 08:30 AM)	John H. Bradbury
	HRSC	COURTNEY	Hearing Scheduled (Pretrial Conference 08/23/2010 02:30 PM)	John H. Bradbury

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Case: CV-2008-0000392 Current Judge: Michael J Griffin

Frank Ronald Marek, etal. vs. Earl A Lawrence, etal.

Frank Ronald Marek, Gayle A Marek vs. Earl A Lawrence, Sandra L Lawrence, Robert C Johnson, Sandi Worthington

Date	Code	User		Judge
5/17/2010	NOHG	COURTNEY	Notice Of Hearing	John H. Bradbury
5/19/2010	MOTN	COURTNEY	Amended Motion For Leave To File Second Amended Complaint	John H. Bradbury
5/20/2010	NOTC	COURTNEY	Defendents Notice of Non-Objection to PLaintiff's Motion to Amend Complaint	John H. Bradbury
6/7/2010	MOTN	COURTNEY	Second Motion For Contempt	John H. Bradbury
	AFFD	COURTNEY	Affidavit Of Gayle Marek In Support Of Second Motion For Contempt	John H. Bradbury
6/14/2010	HRVC	CHRISTY	Hearing result for Motin For Leave to File Ameded Complaint held on 06/14/2010 10:00 AM: Hearing Vacated Motion for Leave to File Second Amended Complaint	John H. Bradbury
7/6/2010	ORDR	CHRISTY	Order to Appear to Answer to the Charge of Contempt	John H. Bradbury
	HRSC	CHRISTY	Hearing Scheduled (Order to Show Cause 08/02/2010 02:00 PM)	John H. Bradbury
7/12/2010	COMP	CHRISTY	Second Amended Complaint	John H. Bradbury
7/26/2010	ANSW	COURTNEY	Defendants' Answer To Plaintiffs' Second Amended Complaint and Amended Counterclaim	John H. Bradbury
	MEMO	COURTNEY	Memorandum Of Law In Support Of Defendants' Second Motion For Summary Judgment	John H. Bradbury
	MOTN	COURTNEY	Motion For Summary Judgment	John H. Bradbury
	AFFD	COURTNEY	Affidavit Of Clinton Fredrickson In Support Of Motion For SUMmary Judgment	John H. Bradbury
	AFFD	COURTNEY	Affidavit Of R.C. Johnson	John H. Bradbury
7/27/2010	MISC	COURTNEY	Defendants' Denial To Plaintiffs' Second Motion For Contempt	John H. Bradbury
8/2/2010	HRVC	CHRISTY	Hearing result for Order to Show Cause held on 08/02/2010 02:00 PM: Hearing Vacated	John H. Bradbury
8/4/2010	OBJE	COURTNEY	Objection To Affidavits and Motion to Strike	John H. Bradbury
	PPCM	COURTNEY	Plaintiff's Pretrial Compliance	John H. Bradbury
8/6/2010	PPCM	COURTNEY	Plaintiff's 2nd Amended Pretrial Compliance	John H. Bradbury
8/9/2010	STIP	CHRISTY	Stipulated Motion to Continue	John H. Bradbury
	ORDR	CHRISTY	Order on Stipulated Motion to Continue	John H. Bradbury
	MOTN	COURTNEY	Motion For LEave To Amend Counter-Claim	John H. Bradbury
	AFFD	COURTNEY	Affidavit Of Mark S. Snyder In Support Of Defendants' Motion To Amend Counterclaim	John H. Bradbury
8/10/2010	CONT	CHRISTY	Continued (Pretrial Conference 10/18/2010 01:30 PM)	John H. Bradbury
	HRSC	CHRISTY	Hearing Scheduled (Jury Trial 10/25/2010 08:30 AM) DAY 1	John H. Bradbury
	HRSC	CHRISTY	Hearing Scheduled (Jury Trial 10/26/2010 08:30 AM) DAY 2	John H. Bradbury

Date: 6/10/2011

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Case: CV-2008-0000392 Current Judge: Michael J Griffin

Frank Ronald Marek, etal. vs. Earl A Lawrence, etal.

Frank Ronald Marek, Gayle A Marek vs. Earl A Lawrence, Sandra L Lawrence, Robert C Johnson, Sandi Worthington

Date	Code	User	Judge
8/10/2010	MEMO	COURTNEY	Memorandum In Opposition To Second Motion For Summary Judgment
	AFFD	COURTNEY	Affidavit In Opposition To Defendants' Second Motion For Summary Judgment
8/16/2010	MOTN	RENEE	defendants' motion to make more definite statement
	MEMO	RENEE	defendants' memorandum of law in support of motion to make more definite statement
8/24/2010	REPL	CINDY	Defendants' Reply to Plaintiffs' Opposition to Defendants' Second Motion for Summary Judgment
9/7/2010	HRHD	CHRISTY	Hearing result for Oral Arguments held on 09/07/2010 08:30 AM: Hearing Held on Motion for Summary Judgment
	DCHH	CHRISTY	Hearing result for Oral Arguments held on 09/07/2010 08:30 AM: District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for hearing estimated: LESS THAN 100 on Motion for Summary Judgment
	CMIN	CHRISTY	Hearing result for Oral Arguments held on 09/07/2010 08:30 AM: Court Minutes on Motion for Summary Judgment
9/27/2010	MEMO	CHRISTY	Memorandum Decision and Order
	SCAN	CHRISTY	Scanned:
10/6/2010	AFFD	COURTNEY	Affidavit Of Mark S. Snyder In Support Of Defendants' Motion To Reconsider Or Clarify
	MOTN	COURTNEY	Defendants' Motion To Reconsider Or Clarify
	MEMO	COURTNEY	Defendants' Memorandum Of Law In Support Of Motion To Reconsider Or Clarify
10/12/2010	MISC	COURTNEY	Defendants' Pretrial Compliance
	NOTC	CHRISTY	Notice of Hearing
	HRSC	CHRISTY	Hearing Scheduled (Motion 10/18/2010 01:30 PM) Motion to Reconsider
10/15/2010	MEMO	COURTNEY	Memorandum In Opposition To Motion To Reconsider Or Clarify
10/18/2010	HRVC	CHRISTY	Hearing result for Jury Trial held on 10/25/2010 08:30 AM: Hearing Vacated DAY 1
	CONT	CHRISTY	Hearing result for Motion held on 10/18/2010 01:30 PM: Continued Motion to Reconsider
	CONT	CHRISTY	Hearing result for Pretrial Conference held on 10/18/2010 01:30 PM: Continued
	HRSC	CHRISTY	Hearing Scheduled (Motion 10/25/2010 11:00 AM)

Date: 6/10/2011

Second Judicial District Court - Clearwater County

User: COURTNEY

Time: 02:00 PM

ROA Report

Page 8 of 9

Case: CV-2008-0000392 Current Judge: Michael J Griffin

Frank Ronald Marek, etal. vs. Earl A Lawrence, etal.

Frank Ronald Marek, Gayle A Marek vs. Earl A Lawrence, Sandra L Lawrence, Robert C Johnson, Sandi Worthington

Date	Code	User		Judge
10/18/2010	HRSC	CHRISTY	Hearing Scheduled (Pretrial Conference 10/25/2010 11:00 AM)	John H. Bradbury
10/19/2010	PDIW	CHRISTY	Plaintiff's 3rd Amended Pretrial Compliance	John H. Bradbury
10/25/2010	HRHD	CHRISTY	Hearing result for Motion held on 10/25/2010 11:00 AM: Hearing Held to Reconsider	John H. Bradbury
	DCHH	CHRISTY	Hearing result for Motion held on 10/25/2010 11:00 AM: District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for hearing estimated: LESS THAN 100 to Reconsider	John H. Bradbury
	CMIN	CHRISTY	Hearing result for Motion to Reconsider held on 10/25/2010 11:00 AM: Court Minutes	John H. Bradbury
	HRHD	CHRISTY	Hearing result for Pretrial Conference held on 10/25/2010 11:00 AM: Hearing Held (OFF THE RECORD)	John H. Bradbury
11/22/2010	MEMO	HOLLIBAUGH	Memorandum Decision and Order	Michael J Griffin
3/2/2011	NOTC	HOLLIBAUGH	Notice of Hearing	Michael J Griffin
	MOTN	HOLLIBAUGH	Defendants Motion for Entry of Judgment	Michael J Griffin
3/8/2011	HRSC	CHRISTY	Hearing Scheduled (Motion 03/18/2011 02:30 PM)	Michael J Griffin
3/18/2011	HRVC	CHRISTY	Hearing result for Motion held on 03/18/2011 02:30 PM: Hearing Vacated	Michael J Griffin
3/25/2011	SCAN	CHRISTY	Scanned:	Michael J Griffin
	JDMT	CHRISTY	Judgment	Michael J Griffin
4/29/2011	JDMT	CHRISTY	Amended Judgment	Michael J Griffin
	SCAN	CHRISTY	Scanned:	Michael J Griffin
	NOTA	COURTNEY	NOTICE OF APPEAL	Michael J Griffin
5/4/2011	OBJC	CBAKER	Objection to Defendant's Memorandum of Costs	Michael J Griffin
	NOTH	CBAKER	Notice Of Telephonic Hearing	Michael J Griffin
	HRSC	CHRISTY	Hearing Scheduled (Telephonic Objection to Costs 05/20/2011 09:30 AM)	Michael J Griffin
5/5/2011		BLEE	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Mark S. Snyder Receipt number: 0001563 Dated: 5/5/2011 Amount: \$4.00 (Cashiers Check)	Michael J Griffin
		BLEE	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Mark S. Snyder Receipt number: 0001563 Dated: 5/5/2011 Amount: \$1.00 (Cashiers Check)	Michael J Griffin
5/16/2011	HRVC	CHRISTY	Hearing result for Objection to Costs held on 05/20/2011 09:30 AM: Hearing Vacated Telephonic (Vacated by Tom Clark)	Michael J Griffin

Date: 6/10/2011

Second Judicial District Court - Clearwater County

User: COURTNEY

Time: 02:00 PM

ROA Report

Page 9 of 9

Case: CV-2008-0000392 Current Judge: Michael J Griffin

Frank Ronald Marek, etal. vs. Earl A Lawrence, etal.

Frank Ronald Marek, Gayle A Marek vs. Earl A Lawrence, Sandra L Lawrence, Robert C Johnson, Sandi Worthington

Date	Code	User	Judge
6/1/2011		COURTNEY	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Clark, Paul Thomas (attorney for Marek, Frank Ronald) Receipt number: 0001835 Dated: 6/1/2011 Amount: \$101.00 (Cashiers Check) For: Marek, Frank Ronald (plaintiff) and Marek, Gayle A (plaintiff) Michael J Griffin
	BNDC	COURTNEY	Bond Posted - Cash (Receipt 1836 Dated 6/1/2011 for 100.00) Michael J Griffin
	BNDC	COURTNEY	Bond Posted - Cash (Receipt 1837 Dated 6/1/2011 for 200.00) Michael J Griffin
6/8/2011	NOTA	COURTNEY	Amended NOTICE OF APPEAL Michael J Griffin

RECEIVED
CLERK - DISTRICT COURT
CLEARWATER, IDAHO
JUN 8 2011

2011 JUN 8 PM 1 36

CASE NO. 0008-392

BY CD 6/8/11

PAUL THOMAS CLARK
Idaho State Bar No. 1329
CLARK and FEENEY
Attorneys for Plaintiffs
The Train Station, Suite 201
13th and Main Streets
P. O. Drawer 285
Lewiston, Idaho 83501
Telephone: (208)743-9516

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

FRANK RONALD MAREK and GAYLE
MAREK, husband and wife,

Plaintiffs,

vs.

EARL A. LAWRENCE and SANDRA L.
LAWRENCE, husband and wife, and
ROBERT C. JOHNSON, a married man,
SANDI WORTHINGTON, a married woman
et. al.,

Defendants.

Case No. CV 2008-392

AMENDED NOTICE OF APPEAL

TO: EARL A. LAWRENCE and SANDRA LAWRENCE and ~~ROBERT C. JOHNSON~~ and
~~SANDI WORTHINGTON~~ and their attorney, MARK SNYDER, 220 N. Hill Street, PO Box
626, Kamiah, ID 83536, and THE CLERK OF THE ABOVE ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

AMENDED NOTICE OF APPEAL

-1-

1. The above named Appellants, FRANK RONALD MAREK and GAYLE MAREK, appeal to the Idaho Supreme Court from the Memorandum Decision and Order entered November 22, 2010, by the Honorable John Bradbury and the Judgment entered March 25, 2011, and Amended Judgment entered on April 29, 2011, by the Honorable Michael J. Griffin.

2. That Appellants have a right to appeal to the Idaho Supreme Court. The Judgments described in paragraph 1 ~~was~~ were entered based on the Memorandum Decision and Order and ~~is~~ an are appealable orders under and pursuant to Rule 11(a)(1).

3. A preliminary statement of the issue on appeal which the Appellants intend to assert in the appeal; provided, any such list of issues on appeal shall not prevent the Appellants from asserting other issues on appeal:

1. Whether the District Court erred in questions of fact and law when determining the boundary between the parties' property.

2. Whether the District Court erred entering a Judgment that does not correspond/comply with what was Ordered in its Memorandum Decision and Order dated November 22, 2010.

4. Has an order been entered sealing all or any portion of the record? If so, what portion? N/A

5.(a) Is a reporter's transcript requested? Yes. Transcript of September 7, 2010 hearing. Transcript of October 25, 2010 hearing.

(b) The appellant requests the preparation of the following portions of the reporters transcript in [] hard copy [] electronic format [X] both (check one).

6. The Appellants request the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.:

<u>Date</u>	<u>Document</u>
07/26/2010	Memorandum Of Law In Support Of Defendants' Second Motion For Summary Judgment
07/26/2010	Motion For Summary Judgment
07/26/2010	Affidavit Of Clinton Fredrickson In Support Of Motion For Summary Judgment

AMENDED NOTICE OF APPEAL

-2-

07/26/2010 Affidavit Of R.C. Johnson
08/10/2010 Memorandum In Opposition To Second Motion For Summary Judgment
08/10/2010 Affidavit In Opposition To Defendants' Second Motion For Summary Judgment
08/24/2010 Defendants' Reply to Plaintiffs' Opposition to Defendants' Second Motion for Summary Judgment
09/27/2010 Memorandum Decision and Order
10/06/2010 Affidavit Of Mark S. Snyder In Support Of Defendants' Motion To Reconsider Or Clarify
10/06/2010 Defendants' Motion To Reconsider Or Clarify
10/06/2010 Defendants' Memorandum Of Law In Support Of Motion To Reconsider Or Clarify
10/15/2010 Memorandum In Opposition To Motion To Reconsider Or Clarify
11/22/2010 Memorandum Decision and Order

7. The Appellants request the following documents, charts, or pictures offered or admitted as exhibits to be copied and sent to the Supreme Court: N/A

8. I certify:

(a) That a copy of this Notice of Appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

Keith Evans
Rt. 1 Box 36-H 380 Clear Creek Road
Kooskia, ID 83539

(b) That the clerk of the district court will be paid the estimated fee for preparation of the reporter's transcript.

(c) That the estimated fee for preparation of the clerk's record has been paid.

(d) That the appellate filing fee has been paid.

(e) That service has been made upon all parties required to be served pursuant to Rule 20.

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DATED this 7th day of June, 2011.

CLARK AND FEENEY

By: [Signature]
Paul Thomas Clark, a member of the firm.
Attorneys for Plaintiffs/Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of June, 2011, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Mark S. Snyder PO Box 626 Kamiah, ID 83536	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Telecopy
Keith M. Evans, RPR, CSR Court Reporter 380 Clear Creek Road Kooskia, ID 83539	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Telecopy <input type="checkbox"/> E-Mail: kkreport@wildblue.net

By: [Signature]
Attorney for Plaintiffs

2011 APR 29 PM 1 57

CASE NO. CV 08-392

CD

PAUL THOMAS CLARK
Idaho State Bar No. 1329
CLARK and FEENEY
Attorneys for Plaintiffs
The Train Station, Suite 201
13th and Main Streets
P. O. Drawer 285
Lewiston, Idaho 83501
Telephone: (208)743-9516

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

FRANK RONALD MAREK and GAYLE)
MAREK, husband and wife,)
Plaintiffs,)

Case No. CV 2008-392

NOTICE OF APPEAL

vs.)

EARL A. LAWRENCE and SANDRA L.)
LAWRENCE, husband and wife, and)
ROBERT C. JOHNSON, a married man,)
SANDI WORTHINGTON, a married woman)
et. al.,)

Defendants.

TO: EARL A. LAWRENCE and SANDRA LAWRENCE and ROBERT C. JOHNSON and
SANDI WORTHINGTON and their attorney, MARK SNYDER, 220 N. Hill Street, PO Box
626, Kamiah, ID 83536, and THE CLERK OF THE ABOVE ENTITLED COURT:

NOTICE OF APPEAL

-1-

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellants, FRANK RONALD MAREK and GAYLE MAREK, appeal to the Idaho Supreme Court from the Memorandum Decision and Order entered November 22, 2010, by the Honorable John Bradbury and the Judgment entered March 25, 2011, by the Honorable Michael J. Griffin.

2. That Appellants have a right to appeal to the Idaho Supreme Court. The Judgment described in paragraph 1 was entered based on the Memorandum Decision and Order and is an appealable order under and pursuant to Rule 11(a)(1).

3. A preliminary statement of the issue on appeal which the Appellants intend to assert in the appeal; provided, any such list of issues on appeal shall not prevent the Appellants from asserting other issues on appeal:

1. Whether the District Court erred in questions of fact and law when determining the boundary between the parties' property.

2. Whether the District Court erred entering a Judgment that does not correspond/comply with what was Ordered in its Memorandum Decision and Order dated November 22, 2010.

4. Has an order been entered sealing all or any portion of the record? If so, what portion? N/A

5.(a) Is a reporter's transcript requested? Yes. Transcript of September 7, 2010 hearing. Transcript of October 25, 2010 hearing.

(b) The appellant requests the preparation of the following portions of the reporters transcript in [] hard copy [] electronic format [X] both (check one).

6. The Appellants request the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.:

<u>Date</u>	<u>Document</u>
07/26/2010	Memorandum Of Law In Support Of Defendants' Second Motion For Summary Judgment
07/26/2010	Motion For Summary Judgment

07/26/2010 Affidavit Of Clinton Fredrickson In Support Of Motion For SUMmary
Judgment
07/26/2010 Affidavit Of R.C. Johnson
08/10/2010 Memorandum In Opposition To Second Motion For Summary Judgment
08/10/2010 Affidavit In Opposition To Defendants' Second Motion For Summary
Judgment
08/24/2010 Defendants' Reply to Plaintiffs' Opposition to Defendants' Second Motion for
Summary Judgment
09/27/2010 Memorandum Decision and Order
10/06/2010 Affidavit Of Mark S. Snyder In Support Of Defendants' Motion To
Reconsider Or Clarify
10/06/2010 Defendants' Motion To Reconsider Or Clarify
10/06/2010 Defendants' Memorandum Of Law In Support Of Motion To Reconsider Or
Clarify
10/15/2010 Memorandum In Opposition To Motion To Reconsider Or Clarify
11/22/2010 Memorandum Decision and Order

7. The Appellants request the following documents, charts, or pictures offered or
admitted as exhibits to be copied and sent to the Supreme Court: N/A

8. I certify:

(a) That a copy of this Notice of Appeal has been served on each reporter of whom a
transcript has been requested as named below at the address set out below:

Keith Evans
Rt. 1 Box 36-H
Kooskia, ID 83539

(b) That the clerk of the district court will be paid the estimated fee for preparation of the
reporter's transcript.

(c) That the estimated fee for preparation of the clerk's record has been paid.

(d) That the appellate filing fee has been paid.

(e) That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 28 day of April, 2011.

CLARK AND FEENEY

By: [Signature]
Paul Thomas Clark, a member of the firm.
Attorneys for Plaintiffs/Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28 day of April, 2011, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Mark S. Snyder PO Box 626 Kamiah, ID 83536	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Telecopy
Keith M. Evans, RPR, CSR Court Reporter 380 Clear Creek Road Kooskia, ID 83539	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Telecopy <input type="checkbox"/> E-Mail: <u>kkreport@wildblue.net</u>

By: [Signature]
Attorney for Plaintiffs

FILED 4/29/11 AT
10:43 AM DROFINO, IDAHO
BY RJH

MARK S. SNYDER, ISB #5760
Attorney at Law
220 N. Hill Street
P. O. Box 626
Kamiah, ID 83536
Telephone 208-935-2001
Facsimile 208-935-7911

Attorneys for Defendants
EARL A. LAWRENCE and SANDRA L. LAWRENCE

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

FRANK RONALD MAREK and)
GAYLE MAREK, husband and wife,)
and SANDRA WORTHINGTON, a)
married woman,)

Plaintiffs,)

vs.)

EARL A. LAWRENCE and SANDRA)
L. LAWRENCE, husband and wife, and)
ROBERT C. JOHNSON, a married)
man, et al.,)

Defendants.)

CASE NO.: CV2008-392

AMENDED
JUDGMENT

WHEREAS, this matter came before the court on Plaintiffs' (Mareks) complaint and the Defendants' (Lawrences) counter-claim seeking resolution of two boundary disputes, and;

WHEREAS, Boundary Number One described below was evidenced by a long existing fence which was removed and subsequently replaced on the same line as established and marked by surveyor, Cuddy and Associates where it presently exists, and;

JUDGMENT

WHEREAS, Boundary Number Two described below runs roughly parallel to and/or on Three Bear Road, which was created by the division of a contiguous tract by Warranty Deed from Robert C. Johnson to Laura Adamson recorded August 9, 1985 as Instrument No. 141784, Clearwater County Land Records, whereby Johnson retained ownership of property East of said boundary and Adamson was conveyed property West of said boundary, and the disputed North 1/4 corner was identified by a concrete monument and identified in said Instrument No. 141784 by reference to a prior right of way deed conveyed to Clearwater County and recorded as Instrument No. 108078, and;

WHEREAS, the parties have agreed to the location Boundary Number One between their respective properties to be the line monumented by the long existing fence and presently evidenced by the fence existing today, and;

WHEREAS, the court's MEMORANDUM DECISION AND ORDER, dated November 22, 2010 on Defendant's Motion For Summary Judgment as to the location of Boundary Number Two, the court made the following findings: "That the monument was in existence east of Three Bear Road where it intersected the east-west centerline of sections 26 and 27 at the time Three Bear Road was modified. That a survey was made prior to the modification of Three Bear Road. That if one uses the description of the road right of way deed and measures back from the centerline of the road, one finds a section line at the location of the old monument. That it was his and Ms. Adamson's intention to convey to her property up to the section line minus the road right of way."

Boundary Number One:

The Lawrences own real property described as the South 1/2 of the Southeast 1/4 of Section 27, Township 38 North, Range 1 West, Boise Meridian, Clearwater County, Idaho. The Mareks own a 68 acre parcel adjacent to and West of the above described Lawrence property in the Southwest 1/4 of Section 27, Township 38 North, Range 1 West, Boise Meridian. Boundary Number One is the common boundary line between these two parcels.

Boundary Number Two:

Lawrences own the North ½ of the Southwest ¼ of Section 26. The Mareks own the East ½ of the Northeast ¼ of the Southeast ¼ of Section 27, Township 38 North, Range 1 West, Boise Meridian, Clearwater County, Idaho. Boundary Number Two is the common boundary line between these two parcels.

NOW THEREFORE, judgment decreeing the location of Boundary Number One and Boundary Number Two shall forever be as follows:

1. Boundary Number One: the long existing fence running north and south, evidenced by survey of Cuddy and Associates, and further evidenced by the fence in its present location.
2. Boundary Number Two: From a point in the center of Three Bear Road on the east-west running south boundary line of Lawrences' property described above (N1/2SW1/4 Section 26, T38N, R1W, B.M.), thence north to the intersection with the east-west center section line of Section 26, Township 38 North, Range 1 West, Boise Meridian, less the easement for Three Bear Road.
3. Litigation costs, not including attorney fees, are awarded to the Lawrences.

Dated this 29th day of April, 2011.



Michael J. Griffin

District Court Judge

CERTIFICATE OF DELIVERY

I hereby certify that I caused a true and correct copy of the foregoing to be:

() mailed, postage prepaid;
() hand delivered;
(☒) facsimile transmitted

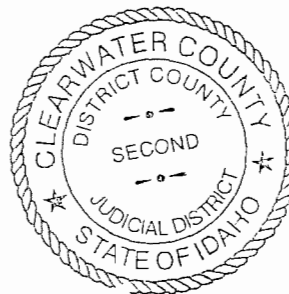
On this 29 day of April, 2011, to:

Mark S. Snyder
Attorney at Law
P.O. Box 626
Kamiah, ID 83536

Paul Thomas Clark
Clark & Feeney
P.O. Box 285
Lewiston, ID 83501

CLERK OF THE COURT

By: Renee Harkness
Deputy



JUDGMENT

FILED 3/25/11 AT
BY [Signature] OROFINO, IDAHO

MARK S. SNYDER, ISB #5760
Attorney at Law
220 N. Hill Street
P. O. Box 626
Kamiah, ID 83536
Telephone 208-935-2001
Facsimile 208-935-7911

Attorneys for Defendants
EARL A. LAWRENCE and SANDRA L. LAWRENCE

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

FRANK RONALD MAREK and)
GAYLE MAREK, husband and wife,)
and SANDRA WORTHINGTON, a)
married woman,)

Plaintiffs,)

vs.)

EARL A. LAWRENCE and SANDRA)
L. LAWRENCE, husband and wife, and)
ROBERT C. JOHNSON, a married)
man, et al.,)

Defendants.)

CASE NO.: CV2008-392

JUDGMENT

WHEREAS, this matter came before the court on Plaintiffs' (Mareks) complaint and the Defendants' (Lawrences) counter-claim seeking resolution of two boundary disputes, and;

WHEREAS, Boundary Number One described below was evidenced by a long existing fence which was removed and subsequently replaced on the same line as established and marked by surveyor, Cuddy and Associates where it presently exists, and;

JUDGMENT

WHEREAS, Boundary Number Two described below runs roughly parallel to and/or on Three Bear Road, which was created by the division of a contiguous tract by Warranty Deed from Robert C. Johnson to Laura Adamson recorded August 9, 1985 as Instrument No. 141784, Clearwater County Land Records, whereby Johnson retained ownership of property East of said boundary and Adamson was conveyed property West of said boundary, and the disputed North 1/4 corner was identified by a concrete monument and identified in said Instrument No. 141784 by reference to a prior right of way deed conveyed to Clearwater County and recorded as Instrument No. 108078, and;

WHEREAS, the parties have agreed to the location Boundary Number One between their respective properties to be the line monumented by the long existing fence and presently evidenced by the fence existing today, and;

WHEREAS, the court's MEMORANDUM DECISION AND ORDER, dated November 22, 2010 on Defendant's Motion For Summary Judgment as to the location of Boundary Number Two, the court made the following findings: "That the monument was in existence east of Three Bear Road where it intersected the east-west centerline of sections 26 and 27 at the time Three Bear Road was modified. That a survey was made prior to the modification of Three Bear Road. That if one uses the description of the road right of way deed and measures back from the centerline of the road, one finds a section line at the location of the old monument. That it was his and Ms. Adamson's intention to convey to her property up to the section line minus the road right of way."

Boundary Number One:

The Lawrences own real property described as the South 1/2 of the Southeast 1/4 of Section 27, Township 38 North, Range 1 West, Boise Meridian, Clearwater County, Idaho. The Mareks own a 68 acre parcel adjacent to and West of the above described Lawrence property in the Southwest 1/4 of Section 27, Township 38 North, Range 1 West, Boise Meridian. Boundary Number One is the common boundary line between these two parcels.


Boundary Number Two:

Lawrences own the North 1/2 of the Southwest 1/4 of Section 26. The Mareks own the East 1/2 of the Northeast 1/4 of the Southeast 1/4 of Section 27, Township 38 North, Range 1 West, Boise Meridian, Clearwater County, Idaho. Boundary Number Two is the common boundary line between these two parcels.

NOW THEREFORE, judgment decreeing the location of Boundary Number One and Boundary Number Two shall forever be as follows:

1. Boundary Number One: the long existing fence running north and south, evidenced by survey of Cuddy and Associates, attached hereto as Exhibit "A", and further evidenced by the fence in its present location.
2. Boundary Number Two: From a point in the center of Three Bear Road on the east-west running south boundary line of Lawrences' property described above (N1/2SW1/4 Section 26, T38N, R1W, B.M.), thence north to the intersection with the east-west center section line of Section 26, Township 38 North, Range 1 West, Boise Meridian, less the easement for Three Bear Road.
3. Litigation costs, not including attorney fees, are awarded to the Lawrences.

Dated this 25th day of March, 2011.


Michael J. Griffin 1003
District Court Judge

CERTIFICATE OF DELIVERY

I hereby certify that I caused a true and correct copy of the foregoing to be:

- ☐ mailed, postage prepaid;
- ☐ hand delivered;
- ☒ facsimile transmitted

on this 28 day of March, 2011, to:

Mark S. Snyder
Attorney at Law
P.O. Box 626
Kamiah, ID 83536

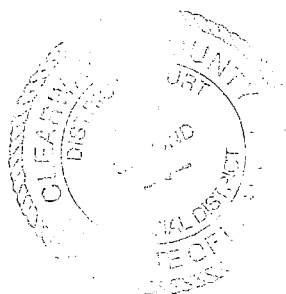
Paul Thomas Clark
Clark & Feeney
P.O. Drawer 285
Lewiston, ID 83501

CLERK OF THE COURT

By:

Deputy

Christy L. Hering



CARRIE BIRD
CLERK - DISTRICT COURT
JULY 10, 2010
2010 NOV 22 PM 5 11
CASE NO. CV2008-392
BY 60

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

FRANK RONALD MAREK and
GAYLE MAREK, husband and wife,
and SANDRA WORTHINGTON, a
married woman,

Plaintiffs,

v.

EARL A. LAWRENCE and SANDRA
L. LAWRENCE, husband and wife, and
ROBERT C. JOHNSON, a married
man, et al.,

Defendants.

Case No: CV-2008-392

MEMORANDUM DECISION AND
ORDER

This case comes before on the Lawrences's Motion for Reconsideration of my denial of their second Motion for Summary Judgment.

I. FACTS

No new facts relevant to this decision have been presented, and the facts of my Memorandum Decision and Order considering the Lawrences's second Motion for Summary Judgment are incorporated herein.

II. CONTENTIONS

In my decision on the Lawrences's second Motion for Summary Judgment I concluded that one possible interpretation of the alleged agreement (the Johnson-Adamson deed) is that the

boundary was agreed to be wherever the section 26-27 section line might one day be surveyed to be. Under such an interpretation of the alleged agreement the Mareks would prevail, and thus, I denied summary judgment.

In this motion for reconsideration, the Lawrences assert that such an interpretation of the agreement requires reformation of the Johnson-Adamson deed. The Lawrences further contend that the reformation would be impermissible in this case, as it would work to the detriment of a subsequent purchaser, the Lawrences. Therefore, the Lawrences contend, the interpretation is not possible, leaving only the interpretation asserted by the Lawrences: that the reference to the right-of-way deed in the Johnson-Adamson deed incorporated the location of the section line as the parties to the right-of-way deed believed it to be as the boundary agreed to.

The Mareks contend that no reformation is required to interpret the deed in the manner favorable to their position, and therefore, the denial of summary judgment was proper.

III. DISCUSSION

Whatever the merits of the Lawrences's assertion that interpreting the Johnson-Adamson deed in favor of the Mareks requires an impermissible reformation of the deed, I still decline to grant the Lawrences summary judgment on their claim of express boundary by agreement.

In further reviewing boundary by agreement case-law, I am convinced that the facts of this case simply do not "fit the mold" of a boundary by agreement. The Lawrences claim that the deed first creating the boundary line here in dispute should be viewed as an express boundary by agreement. However, the case-law clearly shows that a boundary should only be found by agreement at some time after the initial creation of the boundary. *See, e.g., Morrissey v. Haley*, 124 Idaho 870 (1993); *Wells v. Williamson*, 118 Idaho 37 (1990); *Kesler v. Ellis*, 47 Idaho 740 (1929).

Indeed, one explicit pre-requisite for a finding of boundary by agreement is that there exists some uncertainty or disagreement as to the true, on-the-ground location of the boundary line between

coterminous property owners. *Wells* at 41. Certainly there can be no uncertainty as to the location of a boundary line between two property owners prior to the creation of the line, nor before the ownership interests exist. However, that is exactly the position that the Lawrences assert.

Prior to the conveyance from R.C. Johnson to Laura Adamson the property boundary at issue did not exist. Both the Lawrences's and Mareks's properties were owned singly by R.C. Johnson. Obviously there also were no coterminous property owners. Again, R.C. Johnson was the only owner of all of the land. Only after the conveyance from R.C. Johnson to Laura Adamson was there any boundary between coterminous owners to dispute. Therefore, there could not possibly have been any uncertainty or disagreement as to the location of the boundary line at issue prior to agreement here advanced as creating a boundary by agreement: the Johnson-Adamson deed. Because the "uncertainty prior to the agreement" requirement could not possibly have been met in this case, there can be no boundary by agreement via the Johnson-Adamson deed.

Although the Lawrences's counterclaim for boundary by agreement fails, I have nonetheless reconsidered my conclusion in my previous opinion considering possible interpretations of the Johnson-Adamson deed. I now conclude that, based on the language of that deed alone, the boundary line asserted by the Lawrences is the correct boundary line. Under Idaho case-law, the "primary goal" in interpreting and construing deeds is to "give effect to the real intention of the parties." *Porter v. Bassett*, 146 Idaho 399, 404 (2008). In my previous opinion I held that, by referencing a section line, the Johnson-Adamson deed could be construed to place the boundary line according to wherever the section line might one day be surveyed to lay. However, I now hold that this conclusion was incorrect.

When a landowner sells off a portion of his land, he certainly has in mind an on-the-ground location where his property will thereafter end and the purchaser's property will begin. Additionally, the purchaser certainly has an on-the-ground location in mind as to where her property line is located.

Therefore, when Mr. Johnson referenced Section 27 in deeding part of his land to Ms. Adamson, he did not mean to grant away part of his land and end up not knowing for certain where his new boundary lay. Rather, he meant to create a new boundary for himself in a particular location. And, of course, Ms. Adamson meant to purchase land with a boundary in a particular location. Therefore, in referencing Section 27, Mr. Johnson and Ms. Adamson could only have meant to determine their new boundaries according to where they then believed the eastern line of Section 27 to lay, not wherever it might one day be surveyed to lay.

The Mareks presented no evidence on where Mr. Johnson or Ms. Adamson believed that the Section 26-27 line ran. The Lawrences, however, presented evidence showing where Mr. Johnson and Ms. Adamson believed the section line to lay. Mr. Johnson stated in his affidavit that he knew of a certain monument. That the monument was in existence east of Three Bear Road where it intersected the east-west centerline of sections 26 and 27 at the time the Three Bear Road was modified. That a survey was made prior to the modification of Three Bear Road. That, if one uses the description of the road right of way in the right of way deed and measures back from the centerline of the road, one finds a section line at the location of the old monument. That it was his and Ms. Adamson's intention to convey to her the property up to the section line minus the road right of way.

By measuring back from the center of the road at the northern boundary of the southeast quarter of section 27 and the southwest quarter of section 26, it is clear that Wayne Johnson and the County considered the section 26-27 boundary to lay in line with the center of the road where it now runs north to south, and continuing on the same line proceeding north when the road curves to the west. There is no suggestion that eleven years later R.C. Johnson, or anybody else, believed the section line to run anywhere else then where the last survey, the county survey, had suggested the line lay. This, along with R.C. Johnson's knowledge of the location of the monument, establishes that he

believed the section line to run down the center of Three Bear Road where it runs north to south, continuing north where the road curves to the west. There has been no evidence presented that Ms. Adamson believed that the section line ran anywhere other than where the last survey placed it, or anywhere other than where her seller believed it to run. Therefore, the uncontroverted evidence indicates that Mr. Johnson and Ms. Adamson, when referencing Section 27 in the Johnson-Adamson deed, intended that her boundary be determined in reference to a line running down the center of Three Bear Road where it runs north to south, such line continuing north where the road curves to the west. Furthermore, the affidavit of R.C. Johnson confirms such beliefs. His affidavit states that the farming line went up the edge of the Three Bear Road at the time he conveyed the land to the west of the road to Ms. Adamson, and where the road curves to the west, the farming line continued in line with the old monument, which is also in line with the center line of Three Bear Road.

The Mareks, as Ms. Adamson's successors in interest, can only own what R.C. Johnson conveyed to Ms. Adamson. Therefore, according to the language in the Johnson-Adamson deed and my conclusions above, the Mareks only own property west of Three Bear Road where it runs north to south, and own only that property east of Three Bear Road between the road and the centerline of the road as it continues north beyond where the road curves to the west. R.C. Johnson kept for himself everything east of the centerline of Three Bear Road until he conveyed it to the Lawrences predecessors. Therefore, the Lawrences own everything to the east of the centerline of Three Bear Road, excluding of course the road bed itself, as Mr. Johnson reserved the road right of way out of their deed also.

As to the road right of way, there has been discussion about the legal conclusion that Wayne Johnson only possessed a life estate in the land at the time he conveyed the right of way, and therefore, the right of way expired on his death, reverting to R.C. Johnson. It is unnecessary for me to determine the ownership of the road bed, however, because this dispute is between the Mareks and

the Lawrences, and both of their deeds specifically exclude the road right of way. Even if the county did not own the road right of the way at the time of the deeds from R.C. Johnson, he still clearly excluded that land from his grants and neither the Mareks nor the Lawrences have any interest in it.

IV. CONCLUSION

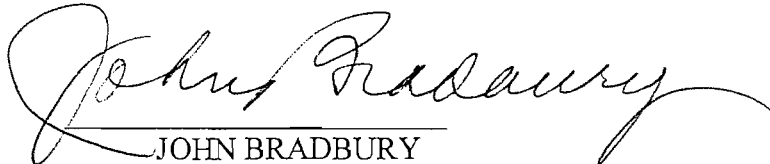
In sum, the facts of this case are a perfect example showing that it is impossible to create a boundary by agreement via the deed creating the disputed boundary. The requirement that there be some uncertainty as to the location of the boundary prior to the agreement simply cannot be met because there will never be uncertainty as to the location of a boundary prior to the creation of that boundary. Because the Lawrences argue that the deed creating the boundary now in dispute constitutes an express boundary by agreement, summary judgment should still be denied; and thus their motion for reconsideration should be denied.

However, I conclude that when a party selling off part of his land references section lines, he and the buyer do not mean the section lines wherever they might one day be surveyed. They deal with the reality at the time the deed is executed, i.e., where the buyer and seller believe them to lay. Therefore, when R.C. Johnson conveyed what is now the Mareks's property to Laura Adamson, he conveyed her the land west of the section line where he and she believed it to lay, minus the Three Bear Road. The uncontroverted evidence presented by the Lawrences shows that Mr. Johnson and Ms. Adamson believed the section 26-27 boundary line to run up the middle of Three Bear Road, continuing north where the road veers to the west. Thus, that line (minus the road) is the boundary between the Mareks's and Lawrences's properties, set up by their predecessors, R.C. Johnson and Laura Adamson.

V. ORDER

For the foregoing reasons, the Lawrences's motion for reconsideration is GRANTED. The Lawrences are directed to draft a judgment consistent with this opinion.

IT IS SO ORDERED, this the 22 day of Nov, 2010



JOHN BRADBURY
DISTRICT JUDGE

CERTIFICATE OF DELIVERY

I, the undersigned, a Deputy Clerk of the above entitled Court, do hereby certify that a copy of this document was mailed or delivered on the 7th day of December 2010 to the following persons:

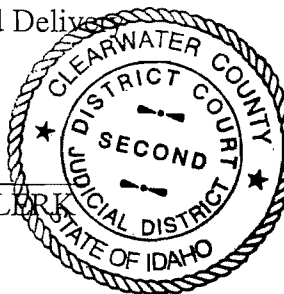
Mark S. Snyder
P.O. Box 626
Kamiah, ID 83536

☒ U.S. Mail
☐ Overnight Mail
☐ Fax
☐ Hand Delivery

Paul Thomas Clark
P.O. Drawer 285
Lewiston, ID 83501

☒ U.S. Mail
☐ Overnight Mail
☐ Fax
☐ Hand Delivery

Carrie Bird
CARRIE BIRD, CLERK



GARRIE BIRD
CLERK - DISTRICT COURT
CLEARWATER COUNTY
ORCLIN, IDAHO

2010 OCT 15 PM 1 30

CASE NO. CV08-392

BY CS DEPUTY

PAUL THOMAS CLARK
Idaho State Bar No. 1329
CLARK and FEENEY
Attorneys for Plaintiffs
The Train Station, Suite 201
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Lewiston, Idaho 83501
Telephone: (208)743-9516

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

FRANK RONALD MAREK and GAYLE
MAREK, husband and wife,

Plaintiffs,

vs.

EARL A. LAWRENCE and SANDRA L.
LAWRENCE, husband and wife, and
ROBERT C. JOHNSON, a married man,
SANDI WORTHINGTON, a married woman
et. al.,

Defendants.

Case No. CV 2008-392

**MEMORANDUM IN OPPOSITION
TO MOTION TO RECONSIDER OR
CLARIFY**

COMES NOW, the above-named Plaintiffs, by and through their attorney of record, Paul
Thomas Clark, of the Law Offices of Clark and Feeney, and respectfully submits the following
Memorandum in Opposition to Motion to Reconsider or Clarify.

MEMORANDUM IN OPPOSITION TO MOTION TO RECONSIDER OR CLARIFY -1-

ARGUMENT

Defendants' claims for boundary by agreement should be denied.

As the Court is aware, the Defendants' claim is that the right of way of deed establishes an express boundary by agreement as to the boundary line, and that the subsequent warranty deed from Johnson to Adamson which notes the right of way deed is further evidence of that express agreement. The Court's further aware that the Plaintiffs' position is that the language of the Adamson warranty deed merely excludes the right of way running through the Plaintiff's property and does not incorporate a line mentioned in the right of way deed as the boundary line of the property.

The Defendants' have asked the Court to reconsider its position and state that if the Plaintiffs' position is correct then deeds would need to be reformed to the prejudice of the Defendants. The Defendants further contend that such a reformation would be inappropriate given the circumstances. The Plaintiffs contend that the Court's decision denying summary judgment on the Defendants' motion for summary on an express and/or implied boundary by agreement should not be overturned and the Defendants' claims are without merit.

With regards to the express claim of boundary by agreement, the Plaintiffs' position that the Adamson warranty deed merely excludes the right of way and does not incorporate a line mentioned in the right of way deed as the boundary line of the property is further supported by the Memorandum of Agreement and subsequent Warranty Deed in which the Defendants received the property adjacent to the Plaintiffs' property from Johnson. Attached hereto as Exhibit A are true and accurate copies of said documents. Said legal description on both documents reads as follows:

MEMORANDUM IN OPPOSITION TO MOTION TO RECONSIDER OR CLARIFY -2-

1 The North one-half of the South West one-quarter (N ½ SW 1/4) of Section 26,
2 Township 38 North, Range 1 W of the Boise Meridian, Clearwater County, Idaho.

3 It is extremely noteworthy that said documents make absolutely no reference whatsoever to the right
4 of way deed. The only reasonable inference that can be made is that the right of way deed and
5 subsequent reference to the right of way in the Adamson warranty deed merely excludes the right
6 of way from the Plaintiffs' property and does not incorporate a boundary line mentioned in the right
7 of way deed because if Johnson had wanted the right of way deed to set the boundary line of both
8 properties then both deeds conveying the adjacent properties would have made reference to the right
9 of way deed. The Defendants' warranty deed makes no mention whatsoever of the right of way
10 deed. The Defendants' warranty deed makes no mention of the boundary of the property being set
11 by the language of the right of way deed. If the intent was to set the boundary of the property
12 consistent with the description in the right of way deed then surely the Defendants' deed would make
13 reference to the right of way deed.
14

15 Read together, both the Adamson deed and the Defendants' deed establish that the Adamson
16 deed's reference to the right of way deed was merely to exclude the right of way from the Plaintiffs'
17 property. Or at the very least, genuine issues of fact remain making summary judgment
18 inappropriate in favor of the Defendants on an express boundary by agreement claim. The Court has
19 previously decided genuine issues of material fact exist with regards to an implied boundary by
20 agreement claim and the Defendants have offered no new facts or contentions otherwise. As such
21 the Plaintiffs respectfully request that the Court deny the Defendants' Motion to Reconsider or
22 Clarify.
23
24
25
26

MEMORANDUM IN OPPOSITION TO MOTION TO RECONSIDER OR CLARIFY -3-

Defendant's would not be prejudiced by a reformation of any deeds.


1 The Defendants' claim that they would be prejudiced by any reformation of deeds lacks any
2 basis. First of all, there is absolutely no present need to reform any of the deeds and if any deed
3 would need to be reformed it would be the Plaintiffs' deed and would only need to clarify the location
4 of the excluded right of way to match where the road currently exists. There has not been a mutual
5 mistake because as set forth above if the intent had been to use the right of way deed to determine
6 the boundary line between the properties, then the Defendants' deed would have referenced the right
7 of way deed. Clearly it did not, there is no mutual mistake, the reference to the right of way in the
8 Adamson deed merely meant to exclude the right of way, and the Defendants cannot show any true
9 prejudice.
10
11

12 **CONCLUSION**

13 Based on the foregoing the Plaintiffs' respectfully urge the Court to deny the Defendants'
14 Motion to Reconsider or Clarify.

15 DATED this 14 day of October, 2010.


16 CLARK AND FEENEY

17
18 By: 
19 Paul Thomas Clark
20 Attorney for Plaintiffs
21
22
23
24
25
26

RECEIVED
INDEXED
FILMED
DELIVERED
MAILED

This instrument is to give notice to interested parties that Robert C. Johnson, a married man dealing with his sole and separate property, has sold, by unrecorded contract of sale, real property in Clearwater County, Idaho, described as follows:

to Earl A. Lawrence and Sandra L. Lawrence, husband and wife.


SELLER

Sandra L. Lawrence
BUYER

On ~~May~~ ^{December} 11, 1998, before me, a notary public in and for the said State, personally appeared Robert C. Johnson, a married man dealing with his sole and separate property, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

Filed and recorded at the request of
at 4:50 o'clock P.M., this 19th day of
Robin Christensen By: _____
Ex-Officio Auditor-Recorder
Clearwater County, Idaho
Fee: 1.00

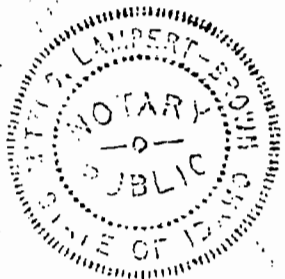
t. of Carl Lawrence
 Day of December, 1998
 By: Cindy Downing Notary Public for Idaho
 Residing at Boise, Idaho
 My commission expires: 5/12/00
 Return: 1054 Mason Butte Rd
Kendrick Id 83537

Memorandum In Opposition To Motion To Reconsider Or Clarify

STATE OF IDAHO)
) ss.
COUNTY OF CLEARWATER)

On December 15, 1998, before me, a notary public in and for the said State, personally appeared Earl A. Lawrence and Sandra L. Lawrence, husband and wife, known to me to be the persons whose names are subscribed to the above and foregoing instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Miki G. Lampert-Brown
Notary Public for Idaho
Residing at Orlando, Idaho
My commission expires: 1/28/2004

MEMORANDUM OF AGREEMENT - P. 2

17

Reconsideration of the Court's Order and Decision dated September, 27th, 2010.

BACKGROUND

In 1983 R.C. Johnson created the disputed boundary line between the subject parcels when he deeded property in Section 27 (Twp. 38N, R. 1W, B.M.) to Laura Adamson by Warranty Deed and retained the property in Section 26.

The court ruled a question of fact exists as to express boundary agreement because the language of the deed could be interpreted two ways—that it incorporated the location of the section line, or that it simply expressed an intent to exclude the county right of way.

A reasonable person could look to the language of the Johnson-Adamson deed and reasonably decide that, despite Mr. Johnson's assertion, the language of the deed can only mean that the seller was merely excluding the right of way running through her property; not incorporating a line *mentioned* in the right of way as the boundary of the property sold. (Emphasis Added)

Memorandum Decision and Order, September 27, 2010.

The deed from Johnson to Adamson excluded ("less") 1.06 acres as described in a prior right of way deed from Wayne Johnson to Clearwater County. Wayne Johnson, and later R.C. Johnson, intended and understood the right of way deed to describe the location of the existing road and right of way. This is obvious and undisputed.

The Johnson to Adamson deed did not simply state, "less the county road right of way", it identified the specific location of the right of way by meets and bounds bearing from a corner. This corner—the disputed corner—was not merely "mentioned" in the Wayne Johnson-County deed, it reflected an understanding of the location of that corner. That understanding was later re-stated in the Johnson-Adamson deed.

In order for the Mareks to prevail according to this decision, the Johnson-Adamson deed must be interpreted to express an intent to simply exclude the right of way wherever it existed in the property conveyed. And because the described physical location of the road does not correspond with the named quarter corner location—by some 60'—there had to have been a mistake under this theory. A mutual mistake by Wayne Johnson and the County. A subsequent mutual mistake by R.C. Johnson and Gayle Adamson. And yet another mistake when R.C. Johnson sold the Section 26 ground to the Lawrences in 1998. (Instrument No. 179945, recorded December 15, 1998).

Having determined the language of the Johnson-Adamson deed to be ambiguous, i.e. subject to more than one interpretation, the court must reform the deed to reflect the intent of the parties. That is, if the location of the corner established by the Marek's recent survey were known by R.C. Johnson and Laura Adamson, they would have set the East boundary of the property conveyed and the West boundary of the property retained on that line—through the cultivated field on the East side of Three Bear Road. To accomplish this, the court would be required to reform the deed reference to the Wayne Johnson-County deed to exclude or modify the meets and bounds description of the right of way.¹

Once determined to be ambiguous, the Johnson-Adamson deed can be interpreted so as to bring about any of the following four results:

1. If the survey correctly establishes the north quarter corner common to Section 26 and 27, Twp. 38N, 1W, B.M., and the legal description is interpreted literally as it

¹ Had it not expired on his death, the Wayne Johnson to County deed would also have to be reformed. The Mareks have not pleaded mutual mistake or reformation.

reads on its face, R. C. Johnson owns the one acre triangle of East of Three Bear Road.² Any such interest has now been conveyed by Quitclaim Deed. See, *Affidavit of Mark Snyder*.

2. If the reference to the Wayne Johnson right of way deed is interpreted to express a grantor/grantee understanding of the location of the disputed corner by the stated distance from the road center, it is an agreed boundary line between the parcels, regardless of where a surveyor later establishes the north quarter corner common to Sections 26 and 27.
3. R.C. Johnson intended to convey ground in Section 27 to Adamson and retain the farm ground in Section 26 with a boundary line between the parcels consistent with decades of cultivation, but was mutually mistaken (with Adamson) as to the location of quarter corner if the surveyor's opinion of the corner controls.
4. The deed language expressed an intent to convey ground to the Section line, excluding the road right of way, but the description of the location of the right of way ground was in error (inconsistent with the surveyed location of the corner) due to a mutual mistake as to the location of the corner.

The remedy for mutual mistake as to the location of a boundary line is normally reformation of the description to reflect the intent of the parties. Here, to rule in favor of the

² Wayne Johnson only held a life estate when he granted the right of way to the County. The grant to the County expired on his death and reverted to the remainderman (R.C. Johnson) Because the meets and bounds description of the right of way was excepted from the Johnson-Adamson deed in 1983 and never subsequently conveyed, title to that acre now reposes in R.C. Johnson.

Mareks, it must be established that R.C. Johnson and Gayle Adamson intended the boundary between the property conveyed and retained to lie on the Section line between Section 26 and Section 27, wherever that Section line was later determined to be and regardless of their understanding of the location of said line.

Because the Lawrences purchased the Section 27 ground and improved it by cultivation to the understood line, without notice of the mutual mistake, reformation of a prior deed cannot work to their detriment under Idaho law.

The general rule is that reformation will not be granted if it appears such relief will prejudice the rights of bona fide and innocent purchasers. See cases collected in 44 A.L.R. 78 (1926), supplemented by 79 A.L.R.2d 1180 (1961). A purchaser must lack notice both of the mistake and of the true intent of the parties, in order to prevent reformation. *Beams v. Werth*, 200 Kan. 532, 438 P.2d 957 (1968).

...

Another example of this rule is presented by *Deubel v. Dearwester*, 36 Ohio App. 60, 172 N.E. 640 (1930). There the plaintiffs sued to eject the defendant and the defendant counterclaimed to reform the deeds. The original grantor had built improvements on one lot, which improvements encroached upon the adjoining lot. The Ohio Court of Appeals in affirming the trial court's reformation of both deeds said:

We think that the physical presence of the house and improvements upon the property conveyed by the original grantor indicated beyond question that the grantor intended to convey all the premises occupied by said improvement to [defendant's] predecessors in title, and, such deed having been made while the original grantor ... still owned both lots, the subsequent grantees of the adjacent lot, now owned by the plaintiffs, took title to such adjacent lot impressed with that intention manifest by the physical occupation of the premises.


Bailey v. Ewing 641, 642

To accept an interpretation of the 1983 Johnson-Adamson deed to mean conveyance to

the Section line consistent with a recent survey requires a finding of mutual mistake as to the distance from the road as it existed in 1983 to the disputed quarter corner.

This dispute arose after the Mareks' survey in 2008. Because the Lawrences purchased without notice of this mistake in 1998, the Johnson-Adamson deed cannot be reformed as a matter of law. We ask the court to reconsider its decision and grant summary judgment consistent with the corner location expressed in the Johnson-Adamson deed. In the alternative, we respectfully request clarification of the legal effect of its second mentioned interpretation of the Johnson-Adamson deed. Specifically, how this interpretation could result in a ruling consistent with the boundary line asserted by the Mareks.

DATED this 6th day of October, 2010.

By: 
MARK S. SNYDER
Attorney for Defendants

CERTIFICATE OF DELIVERY

I hereby certify that I caused a true and correct copy of the foregoing to be:

☒ mailed, postage prepaid;
☐ hand delivered;
☒ facsimile transmitted

On this 14th day of October, 2010, to:

Paul Thomas Clark
Clark & Feeney
P.O. Drawer 285
Lewiston, ID 83501

By: _____

JODY SNYDER

CARRIE BIRD
CLERK - DISTRICT COURT
CLEARWATER COUNTY
CROFTON, IDAHO

2010 OCT 6 AM 11 52

CASE NO. CV08-392

BY CD DEPUTY

MARK S. SNYDER, ISB #5760
Attorney at Law
220 N. Hill Street
P. O. Box 626
Kamiah, ID 83536
Telephone 208-935-2001
Facsimile 208-935-7911

Attorneys for Defendants
EARL A. LAWRENCE and SANDRA L. LAWRENCE

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER**

FRANK RONALD MAREK and)
GAYLE MAREK, husband and wife,)
and SANDRA WORTHINGTON, a)
married woman,)

Plaintiffs,)

vs.)

EARL A. LAWRENCE and SANDRA)
L. LAWRENCE, husband and wife, and)
ROBERT C. JOHNSON, a married)
man, et al.,)

Defendants.)

CASE NO.: CV2008-392

DEFENDANTS' MOTION TO
RECONSIDER OR CLARIFY

COMES NOW the defendants, by and through their attorney of record, Mark S. Snyder and hereby and moves this Court to reconsider or clarify its Opinion and Order dated September 27th, 2010, on Plaintiffs' Motion for Summary Judgment.

DEFENDANTS' MOTION TO RECONSIDER OR CLARIFY

1

48.
ORIGINAL

This motion is brought pursuant to I.R.C.P. 11(a)(2)(B) and is supported by the accompanying Memorandum of Law and the court records and file in this matter

DATED this 6th day of October, 2010.

By: 

MARK S. SNYDER
Attorney for Defendants

CERTIFICATE OF DELIVERY

I hereby certify that I caused a true and correct copy of the foregoing to be:

☒ mailed, postage prepaid;
☐ hand delivered;
☒ facsimile transmitted

On this 6th day of October, 2010, to:

Paul Thomas Clark
Clark & Feeney
P.O. Drawer 285
Lewiston, ID 83501

By: 
JODY SNYDER

BY CD DEPUTY

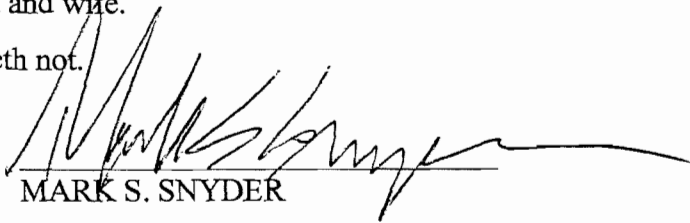
ORIGINAL

have personal knowledge of the facts stated herein; and therefore am competent to make this affidavit. That your affiant is the attorney for the Defendants in the above-entitled matter.

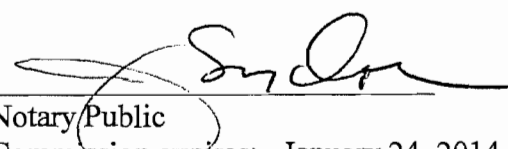
That your affiant states as follows:

1. Attached hereto is a true copy of a Quitclaim Deed from Robert C. Johnson to Earl and Sandra Lawrence, husband and wife.

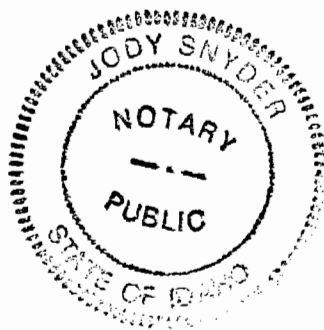
FURTHER your affiant sayeth not.


MARK S. SNYDER

SUBSCRIBED and SWORN to before me this 6th day of October, 2010.


Notary Public

Commission expires: January 24, 2014



CERTIFICATE OF DELIVERY

I hereby certify that I caused a true and correct copy of the foregoing to be:

- ☒ mailed, postage prepaid;
- ☐ hand delivered;
- ☒ facsimile transmitted

On this 16th day of October, 2010, to:

Paul Thomas Clark
Clark & Feeney
P.O. Drawer 285
Lewiston, ID 83501

By: _____

JODY SNYDER

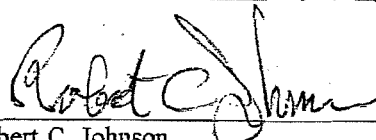
QUITCLAIM DEED

This QUITCLAIM DEED is made this 5th day of OCTOBER, 2010, wherein, for value received, Robert C. Johnson does hereby convey, release, remise and forever quitclaim any interest he may have in the following real property unto Earl Lawrence and Sandra Lawrence, husband and wife, whose address is 381 Mason Butte Road, Kendrick, ID 83537, all of the following described real property, situate in the County of Clearwater, State of Idaho, to-wit:

All property situated in Section 27, Township 38 North, Range 1 West, Boise Meridian, lying East of Three Bear Road.

to have and hold as their own, or to their heirs, devisees or assigns forever.

DATED this 5th day of OCTOBER 2010.



Robert C. Johnson

STATE OF IDAHO)
County of Ada) ss.

On this 5th day of October, 2010, before me, the undersigned notary public, personally appeared known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.




NOTARY PUBLIC
Commission expires: 4/12/2012

CARRIE DIRD
CLERK - DISTRICT COURT
CLEARWATER COUNTY
GROFENO, IDAHO

4 2010 SEP 27 PM 12 16

CASE NO. CV 2008-392

BY CP CLERK

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

FRANK RONALD MAREK and
GAYLE MAREK, husband and wife,
and SANDRA WORTHINGTON, a
married woman,

Plaintiffs,

v.

EARL A. LAWRENCE and SANDRA
L. LAWRENCE, husband and wife, and
ROBERT C. JOHNSON, a married
man, et al.,

Defendants.

Case No: CV-2008-392

MEMORANDUM DECISION AND
ORDER

This matter comes before me on Earl and Sandra Lawrence's second motion for summary judgment. Although part of the motion asserts that summary judgment should be granted on a claim of adverse possession, I decided in response to the Lawrence's first motion for summary judgment that summary judgment should not be granted on a theory of adverse possession, and the arguments now proffered by the Lawrences fail to change my decision in that regard. Therefore, this decision will address only the Lawrences's argument that I should find as a matter of law that the property line at issue is in the place they assert based on a boundary by agreement.

I. FACTS

The following facts are undisputed. The adjoining property owners own lands generally falling on the western and eastern sides, and within the northern corners, of Clearwater County sections 26 and 27; the Mareks owning the property on the western side of the line, in the northwest corner of section 27, and the Lawrences owning the property on the eastern side of the line, in the northeast corner of section 26. The disputed portion of the property lies to the east of the section line according to the most recent survey (the Cuddy survey), and to the west of the portion of Three Bear Road that curves away from that surveyed section line slightly toward the west.

The prior owner of the disputed land, and the adjacent parcels to the east and west of the disputed land, was R.C. Johnson. However, prior to Mr. Johnson's outright ownership, his father, Wayne Johnson, retained a life estate in the property. During the time that the senior Johnson still retained a life estate, specifically, December 9, 1974, he executed a right of way deed to Clearwater County to allow the county to move Three Bear Road slightly eastward. Additionally, if the right of way boundary description measurements, all stated as a certain distance from the section line of sections 26 and 27, are plotted on an aerial photo of the disputed and surrounding lands (as performed by R.C. Johnson in "Exhibit 'D'" of his affidavit) using the alleged location of an old concrete survey marker as the section line, then the right of way land very closely matches the actual location of Three Bear Road.

On August 8, 1985, R.C. Johnson conveyed property described as follows to the Marek's predecessor, Laura Adamson: "Sec 27, 38N, 1W E1/2 NESE, LESS S 36', AND LESS 1.06 AC ROAD RIGHT OF WAY IN SEC 27 RECORDED No 108078."

The Mareks also currently own a parcel of land directly to the north of the Lawrence's property. A road accessing this northern parcel crosses the disputed property, coming off of Three Bear Road, heading slightly east, and then turning north, almost paralleling Three Bear Road. The property between Three Bear Road and the access road is not currently cultivated, though all of the disputed land to the east of the access road is currently farmed by the Lawrences.

II. CONTENTIONS

The Lawrences contend that the reference to the right of way deed of "Less 1.06 Ac Road Right of Way in Sec. 27 Recorded No. 108078" within the deed from R.C. Johnson to the Marek's predecessor, Laura Adamson, evinces an express boundary by agreement whereby Mr. Johnson and Ms. Adamson agreed that location of the section line enunciated within the right of way deed would be Ms. Adamson's eastern boundary; that being the boundary line currently advocated by the Lawrences, though differing from the section and boundary line asserted by the Mareks. Furthermore, they also contend that I should find an implied boundary by agreement between the Lawrences and the Mareks based on the continuous use of the disputed property by the Lawrences and their predecessors for farming.

The Mareks contend that the language within the Johnson-Adamson deed does nothing more than notify the purchaser that the interest in land purchased did not include the interest in the right of way over a 1.06 acre portion of the total land purchased. Further, the Mareks contend that the court should not find an implied boundary by agreement because a required element of such a finding is some uncertainty about the location of a property line that did not exist at the time the alleged implied agreement

arose. The Mareks also question whether the disputed land has been used by the Lawrences and their predecessors up to the eastern boundary of Three Bear Road, noting that currently the cultivation line ends at the access road.

III. DISCUSSION

A. Standard of Review

Summary judgment is only appropriate “if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” The burden of proving the absence of an issue of material fact is on the moving party, in this case, the Lawrences. *Blickenstaff v. Clegg*, 140 Idaho 572, 577 (2004) (citations omitted). The facts are to be construed in favor of the party opposing the motion, in this case the Mareks, who must also be given the benefit of all favorable inferences that can reasonably be drawn. *Anderson v. Ethington*, 103 Idaho 658, 660 (1982). Furthermore, “if reasonable persons could reach different findings or draw conflicting inferences from the evidence, the motion must be denied.” *Wade Baker & Sons Farm v. Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints*, 136 Idaho 922, 925 (2002).

B. Because Reasonable Persons Could Draw Conflicting Inferences as to the Intended Meaning of the Johnson-Adamson Deed, Summary Judgment on a Theory of Expressed Boundary by Agreement Should be Denied.

The Lawrences argue that the “right of way deed” reference within the Johnson-Adamson deed, and Mr. Johnson’s affidavit, show that Mr. Johnson and Ms. Adamson intended the eastern boundary of the property conveyed to Ms. Adamson to follow the

section line as Clearwater County believed it to be when they obtained the right of way from Wayne Johnson.

It does appear that Clearwater County believed the section line to be in the same location as the boundary line asserted by the Lawrences. Indeed, if one uses the measurements within the description of the right of way boundary, and measures back from the current location of the road, one would find a section line location well west of the line found by the Cuddy survey, and precisely where the Lawrences assert the boundary line appropriately should be. Therefore, it is only reasonable to infer that Clearwater County and the senior Mr. Johnson believed the section line to be west of the Cuddy surveyed line. However, that is not the only inference that must be made in order to conclude as the Lawrences do.

In order to agree with the Lawrences's assertion of an express boundary by agreement, one would have to further infer that the reference to the right of way deed was in fact intended to incorporate the location of the section line under that deed as the boundary line of the property deeded to Ms. Adamson. Such an inference is reasonable. R.C. Johnson, by his affidavit, avers that it was the intention of Ms. Adamson and him to set the boundary line according to a now non-existent concrete marker, such marker evidencing a line in the very same location that Clearwater County apparently believed the section line to run.

However, the opposite inference is also equally reasonable. A reasonable person could look to the language of the Johnson-Adamson deed and reasonably decide that, despite Mr. Johnson's assertion, the language of the deed can only mean that the seller

was merely excluding the right of way running through her property; not incorporating a line mentioned in the right of way as the boundary of the property sold.

Because reasonable persons could “draw conflicting inferences” as to the question of whether an expressed boundary line by agreement was created by the deed from R.C. Johnson to Laura Adamson, summary judgment finding the boundary line by expressed agreement is inappropriate.

C. Because There is Still a Genuine Issue of Material Fact Regarding the Use of the Entirety of the Disputed Property After the Sale to Ms. Adamson, Summary Judgment on a Theory of Implied Boundary by Agreement Should Also be Denied.

The Lawrences assert that I can find an implied boundary by agreement in light of the fact that ever since the sale of property to Ms. Adamson, the Mareks and their predecessors have only used the property on the west side of Three Bear Road (other than using the access road to the northern property), and that the Lawrences and their predecessors in interest have been the exclusive users of all of the property to the east of Three Bear Road. In support of this assertion the Lawrences claim that, during the time that Mr. Lawrence’s father leased the eastern property, the land was farmed up to the eastern edge of Three Bear Road. The Lawrences also claim that even after Mr. Lawrence purchased the land from R.C. Johnson, he continued to use the land to the eastern edge of Three Bear Road.

On the other hand, the Mareks assert that neither the Lawrences nor their predecessors in interest in fact used the land up to the eastern edge of Three Bear Road. In support of this contention, the Mareks point to the affidavit of Mr. Marek, stating that cultivation currently stops at the access road; and further, that the inconsistency between this fact and the Lawrences’s assertion that the land has always been used up to the

eastern edge of Three Bear Road raises a countervailing inference to the Lawrences's assertion as to the prior use of the disputed land.

The extent and nature of the use of the land to the east of Three Bear Road is a genuine issue of fact left to be resolved. This fact is material because the Lawrences ask me to find an implied boundary by agreement at the eastern edge of Three Bear Road, and such a finding would require me to find that there was acquiesced-to use of the eastern property up to the eastern edge of the road. Because a genuine issue of material fact remains to be resolved, summary judgment finding an implied boundary by agreement is inappropriate.

IV. CONCLUSION

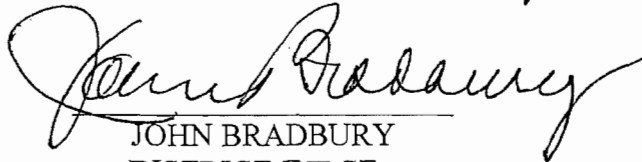
Because it would be reasonable for a person to infer both that the reference to the right of way deed within the Johnson-Adamson deed was meant to establish Ms. Adamson's (and thus the Marek's) boundary line as the eastern edge of Three Bear Road, and alternatively that such reference was only meant to exclude the right of way, summary judgment finding an expressed boundary by agreement is inappropriate.

Because the extent and nature of the use of the land on the eastern side of Three Bear Road throughout the course of time after the sale to Ms. Adamson is a material fact still genuinely in dispute, summary judgment finding an implied boundary by agreement is also inappropriate.

V. ORDER

For the reasons stated above, the Lawrence's motion for summary judgment is
DENIED.

IT IS SO ORDERED, this the 27 day of Sept, 2010



JOHN BRADBURY
DISTRICT JUDGE

CERTIFICATE OF DELIVERY

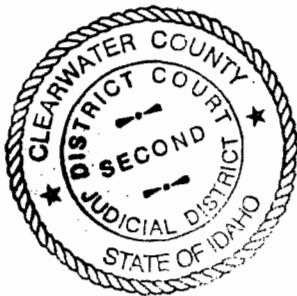
I, the undersigned, a Deputy Clerk of the above entitled Court, do hereby certify
that a copy of this document was mailed or delivered on the 27th day of September
2010 to the following persons:

Mark S. Snyder
P.O. Box 626
Kamiah, ID 83536

☒ U.S. Mail
☐ Overnight Mail
☐ Fax
☐ Hand Delivery

Paul Thomas Clark
P.O. Drawer 285
Lewiston, ID 83501

☒ U.S. Mail
☐ Overnight Mail
☐ Fax
☐ Hand Delivery



CARRIE BIRD, CLERK

By: Christy L. Hering
Deputy Clerk

CARRIE BIRD
CLERK-DISTRICT COURT
CLEARWATER COUNTY
GRADING, IDAHO

2010 AUG 24 PM 12 00

CASE NO. CV 2008-392

BY cg DEPUTY

MARK S. SNYDER, ISB #5760
Attorney at Law
220 N. Hill Street
P. O. Box 626
Kamiah, ID 83536
Telephone 208-935-2001
Facsimile 208-935-7911

Attorneys for Defendants
EARL A. LAWRENCE and SANDRA L. LAWRENCE

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

FRANK RONALD MAREK and)
GAYLE MAREK, husband and wife,)
and SANDRA WORTHINGTON, a)
married woman,)

Plaintiffs,)

vs.)

EARL A. LAWRENCE and SANDRA)
L. LAWRENCE, husband and wife, and)
ROBERT C. JOHNSON, a married)
man, et al.,)

Defendants.)

CASE NO.: CV2008-392

DEFENDANTS' REPLY TO
PLAINTIFFS' OPPOSITION TO
DEFENDANTS' SECOND MOTION
FOR SUMMARY JUDGMENT

COMES NOW, the above-named defendants, by and through their attorney of record,

Mark S. Snyder, and hereby replies to Plaintiffs' Motion for Summary Judgment.

DEFENDANTS' REPLY TO PLAINTIFFS' OPPOSITION
TO DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT

1. 64.

ORIGINAL

A. Tarry Line:

Plaintiffs have offered no opposition to the Tarry line and therefore have conceded summary judgment on that issue.

"It is axiomatic that upon a motion for summary judgment the non-moving party may not rely upon its pleadings, but must come forward with evidence by way of affidavit or otherwise which contradicts the evidence submitted by the moving party, and which establishes the existence of a material issue of disputed fact."

Zehm v. Associated Logging Contractors, Inc., 116 Idaho 349, 350, 775 P.2d 1191, 1192 (1998).

This court ruled on the location of the Tarry line as being the fence line, based upon "persuasive evidence" of an agreed boundary line after an evidentiary hearing. The Plaintiffs have presented no additional evidence which would change that ruling. A trial on this issue is not necessary.

B. Three Bear Road line:

Plaintiffs strenuously argue that the facts of this case do not support a claim of adverse possession. It is conceded that boundary by agreement and a boundary established by adverse occupation to said boundary are mutually exclusive.

Predecessors in interest to Plaintiffs and Defendants expressly agreed on the common boundary along Three Bear Road now in dispute. Defendants' assertions to the contrary are specious. They argue:

1. Lack of privity. *"Said alleged deed is between Wayne Johnson and the County. Boundary by agreement requires an agreement between the parties or their predecessors in interest. Defendants are not parties to the Deed nor is the County*

predecessor in interest. ”

The Right of Way Deed from Wayne Johnson to the County (Exhibit “A”) reflects an agreement between those parties to convey an interest in a strip of Johnson’s ground to the County for right of way purposes. The Right of Way Deed followed relocation of Three Bear Road circa 1973—it was moved East. *Affidavit of Clinton Frederickson.*

The legal description on the Deed established the location of the 60 foot wide strip by measurement from the understood 1/4 corner. The location of that corner could then, and can now, be identified by measurement from the center of the existing Three Bear Road. The Plaintiffs are correct—this did not effect a boundary agreement between co-terminous owners. The boundary agreement took effect between Robert Johnson and Laura Adamson when the contiguous parcel was divided by Warranty Deed recorded September 9th, 1985. (Exhibit “B”).

The part of the legal description on the Johnson-Adamson deed: “less the 1.06 acre road right of way in Sec. 27 recorded No. 108078”, by reference to the instrument of record, fixed the disputed corner at a point 50 feet East of the center of the road. Regardless of the validity of the Right of Way Deed Wayne Johnson granted the County, reference to the legal description of the strip of ground in the Deed constituted an express, written boundary line agreement. Laura Adamson accepted delivery of the Deed from Robert Johnson—note that it was recorded at her request on September 9, 1985--and thereby manifested her intent to agree to the stated boundary.

Consider this. Under no circumstances did Gayle Marek receive any more ground than her mother, Laura Adamson could convey. Her deed from Robert Johnson excepted the 60 foot

strip. If the North 1/4 corner advocated by the Plaintiffs is established according to their survey, most of the strip as described in Instrument No. 108078 would lie East of Three Bear Road. Plaintiffs further contend the Right of Way Deed granted from Wayne Johnson to the County was invalid because at the time of conveyance he owned only a life estate in the property conveyed. If that were true, Robert Johnson still owns most the 60 foot strip.¹ See, Illustration attached hereto as Exhibit "C".

2. Right of Way Deed is invalid. *"Wayne had no right as a life tenant to execute the Right of Way Deed and thus it is invalid...As such the Right of Way Deed is invalid because of Wayne's inability to execute the same and for purposes of this case, said instrument cannot act as any sort of express agreement fixing a boundary line."*

Plaintiffs are correct in one respect. Wayne deeded the contiguous tract in Section 26 and Section 27 to his son Robert (retaining in himself a life estate) in January, 1974. In November of 1974 the County prepared a Right of Way Deed and asked Wayne to sign and deliver it for recording. We can assume this was a mistake. Had the County been aware of the prior conveyance to his son Robert, they would have asked both of the Johnsons to sign the deed.

Plaintiffs are also correct that, *"life tenants only have the power to divest their interest to another..."*, but incorrect in their conclusion that the Right of Way Deed was therefore *"invalid"*. There may be an issue as to whether the Right of Way Deed was intended as the

¹ Part of that strip described in the Right of Way Deed was in Section 27, and was later sold to Defendants. This explains approximate acreage stated in the Right of Way Deed (1.8 acres) and in the Warranty Deed—Robert Johnson to Laura Adamson (1.06 acres). The access road claimed by the Plaintiffs lies within this strip arguably now owned by Robert Johnson.

conveyance of a fee simple interest or an easement. It makes no difference here. A life tenant may convey a part of his life estate. A life tenant may also convey an easement.

Any person with a possessory interest in land may create an easement burdening that person's interest. The easement, however, cannot last beyond the interest that the grantor held in the servient tenement. A fee holder, a life tenant, a lessee, or the executor of a will may grant an easement.

Bruce and Ely, The Law of Easements and Licenses in Land, §3:4, pp.3-9, 3-10.

The Right of Way Deed was valid. However, the interest conveyed (an estate or easement for his life) expired on Wayne Johnson's death in 1982² and reverted to the remainderman, Robert Johnson. According to Plaintiffs' own argument, because Robert Johnson excepted this one acre strip from his conveyance to Laura Adamson, he would still own it today.

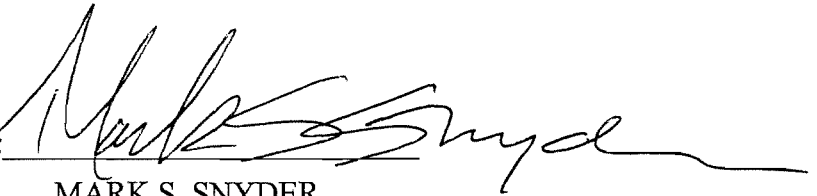
The correct conclusion here, however, is not that Robert Johnson still owns the one acre strip of land (most of which Plaintiffs now claim), but that Robert Johnson and Laura Adamson agreed on the boundary. They memorialized that agreement with the recorded Warranty Deed. That Deed referred to a prior recorded Right of Way Deed, bearing a legal description which identified the location of the corner and boundary line now in dispute. The Defendants own the property East of said corner. The Plaintiffs own the property West of the North corner³ of the boundary line. The South corner of said line is not in dispute.

² Date of death obtained from public records.

³ Subject, possibly to the County's prescriptive easement, since whatever was conveyed by Wayne Johnson expired on his death in 1982, but the County has continued to maintain the road since then.

Most of the access road sits on Defendants' property. Defendants have yet to allege facts sufficient to claim a legal right to use the road by virtue of an implied or prescriptive easement.

DATED this 24th day of August, 2010.

By: 
MARK S. SNYDER
Attorney for Defendants

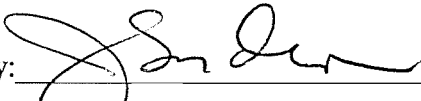
CERTIFICATE OF DELIVERY

I hereby certify that I caused a true and
correct copy of the foregoing to be:

- ☒ mailed, postage prepaid;
☐ hand delivered;
☐ facsimile transmitted

On this 24th day of August, 2010, to:

Paul Thomas Clark
Clark & Feeney
P.O. Drawer 285
Lewiston, ID 83501

By: 
JODY SNYDER

108078

RECEPTION
INDEXED
FILED
DELIVERED
MAILED

RIGHT OF WAY DEED

KNOW ALL MEN BY THESE PRESENTS, that Wayne Johnson

of Oratio, County of Clearwater, State of

Idaho first party, for and on account of the certain benefits to him accruing, and of other valuable considerations, and the sum of One and no/100ths Dollars, (\$1.00) to him in hand paid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the Clearwater County second party, as and for a right of way for a public highway, the following described parcel of land situated in the County of Clearwater in the State of Idaho, of which grantor Wayne Johnson the sum of one to wit:

A part of the NWSW 1/4 of Section 26 T38N R1W and part of the NESE 1/4 of Section 27 T38N R1W Clearwater County State of Idaho, and other described as follows:

Commencing at the 1/4 corner common to sections 26 and 27, thence, West 20 feet to the TRUE POINT OF BEGINNING, thence;
West, 60 feet;
South 90° 30' East, 300 feet;
East, 60 feet;
North 90° 30' West, 300 feet to the TRUE POINT OF BEGINNING and being an area of 0.40 acres, more or less.

Also a tract of land comprising the existing County road right of way and described as follows:
Commencing at the 1/4 corner common to Sections 26 and 27, thence South 299 feet to the TRUE POINT OF BEGINNING, thence;
West, 30 feet;
South, 1021 feet, more or less, to the South 1/16 line of NESE 1/4;
East, 60 feet;
North, 1021 feet;
West, 30 feet to the TRUE POINT OF BEGINNING and comprising an area of 1.40 acres, more or less.

Excepting that portion already dedicated by public use or otherwise as a public road. New right of way required being approximately 200 & 1/2 acres of the 160 & 1/2 acres above described.

There is also granted hereby an easement adjacent to the above described highway right of way for relocation of all irrigation and drainage ditches and structures and such surface drain ditches as may be necessary to the proper construction of the highway.

TO HAVE AND TO HOLD, The same unto the Clearwater County for the purpose of a public highway forever, but whenever such land shall cease being used for highway purposes the land shall revert to the owner or his heirs or assigns.

STATE OF Idaho)
County of Clearwater) ss

Wayne A. Johnson

On this 9 day of December, 1994, before me, the undersigned, a Notary Public in and for said State, personally appeared Wayne Johnson Deputy Clerk, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Gayle Hayden, Clerk of the District Court
by Ante Thomas Deputy
Notary Public in and for the State
of Idaho Residing at Crofton
Clearwater County.

Vol. 10828
FILED OR RECORDED
GAYLE HAYDEN
CLERK OF DISTRICT COURT
DEC -9 PM 2:42
CLEARWATER COUNTY, IDAHO
BY Ante Thomas Deputy
RECORDED BY _____

(Optional)

Recorded ☐
Microfilmed ☐
Indexed ☐Platted ☐
Deed Card ☐
Compared ☐Key Punched ☐
Master File ☐
Abstracted ☐To Treasurer ☐☐ ☒

(DO NOT WRITE ABOVE THIS LINE)

WARRANTY DEED

ROBERT C. JOHNSON

of MERIDIAN County of ADA
hereby CONVEYS, GRANTS and WARRANTS TOGRANTOR(S)
State of Idaho

LAURA B. ADAMSON

whose current address is Rt #1 KENDRICK, IDAHO Box 1052
for the sum of Twenty Four Thousand Nine Hundred Sixty

GRANTEE(S)

Dollars (\$24,960⁰⁰)

the following described tract(s) of land in

CLEARWATER

County, State of Idaho:

Sec 27, 38N, 1W

E 1/2 NESE, LESS S 36', AND

LESS 1.06 AC ROAD RIGHT OF WAY IN SEC 27
RECORDED NO 108078

Filed and acknowledged in presence of Laura Adamson
at 1205 P.M. on 9th day of August, 1985
by Allen Medalen and Robert Christensen
Clearwater County, Idaho
Page 200
Return: Rt 1 Box 1052
Kendrick, ID 83537

2 1/2 Mi EAST

Location of above described property SOUTHWICK, IDAHO

House No.

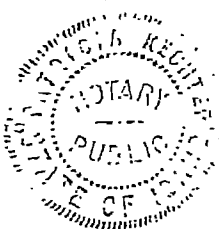
Street

Witness the hand of said Grantors this

day of

A.D. 19

(NOTARY SEAL)

State of Idaho
County of Ada

} ss. On the 8th day of August A.D. 1985

personally appeared before me Robert C. Johnsonthe signer(s) of the within instrument, who duly acknowledged to me that he
executed the same.Residing at: Julietta

My Commission expires: 12/12/87

MAIL DEED TO:

MAIL TAX NOTICE TO:

Name

Address

City & State

Zip

Defendants' Reply To Plaintiffs' Opposition To

3186
462 1/2 IP
EL=2267.43

1/4 corner
COMMON to Sec.
26 & 27, TWP.
38 N., 1 W., B.M.

Right of
Way Deed
I. # 108078

Three Bear
Rd. →



CARRIL BIRD
CLERK-DISTRICT COURT
CLEARWATER COUNTY
OROFINO, IDAHO

PAUL THOMAS CLARK
Idaho State Bar No. 1329
CLARK and FEENEY
Attorneys for Plaintiff
The Train Station, Suite 201
13th and Main Streets
P. O. Drawer 285
Lewiston, Idaho 83501
Telephone: (208)743-9516

2010 AUG 10 AM 11 23

CASE NO. 008-392

BY [Signature] DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

FRANK RONALD MAREK and GAYLE)
MAREK, husband and wife,)

Plaintiffs,)

vs.)

EARL A. LAWRENCE and SANDRA L.)
LAWRENCE, husband and wife, and ROBERT)
C. JOHNSON, a married man, SANDI)
WORTHINGTON, a married woman et. al.,)

Defendants.)

Case No. CV 2008-00392

**AFFIDAVIT IN OPPOSITION TO
DEFENDANTS' SECOND MOTION
FOR SUMMARY JUDGMENT**

STATE OF IDAHO)
) ss.
County of Nez Perce)

FRANK RONALD MAREK, being first duly sworn upon oath, deposes and states as follows:

1. Your Affiant is one of the Plaintiffs in the above-captioned matter, am competent to testify in this matter to the following, and do so based upon my personal knowledge.

2. The property that we own that has been referred to as the Three Bear Road dispute is not entirely being farmed/cultivated by the Defendants.

AFFIDAVIT -1-

LAW OFFICES OF
CLARK AND FEENEY, LLP
LEWISTON, IDAHO 83501

MS.

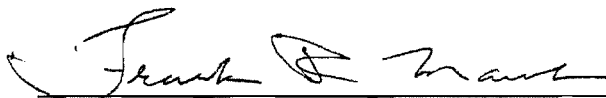
3. An access road exists in the disputed area that connects Three Bear Road to other property we own north of the properties in dispute.

4. This access road is essential to us accessing our other property from a safety standpoint. There is no other safe alternative access.

5. We use this access road frequently.

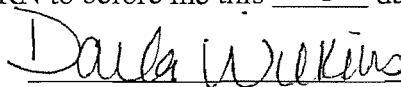
6. The property in dispute that lies to the west of the access road and to the right of Three Bear Road is not and has not been cultivated by the Defendants.

DATED This 6th day of August, 2010.



FRANK RONALD MAREK

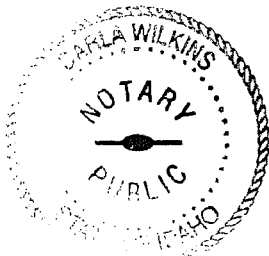
SUBSCRIBED AND SWORN to before me this 6th day of August, 2010.



NOTARY PUBLIC FOR STATE OF IDAHO

Residing at: Elm Street

Commission expires: 4-26-2013



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9 day of August, 2010, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Mark S. Snyder PO Box 626 Kamiah, ID 83536	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Telecopy
--	--

By: 

Attorney for Plaintiffs

CARRIE BIRD
CLERK-DISTRICT COURT
CLEARWATER COUNTY
CROFTING, IDAHO

MARK S. SNYDER, ISB #5760
Attorney at Law
220 N. Hill Street
P. O. Box 626
Kamiah, ID 83536
Telephone 208-935-2001
Facsimile 208-935-7911

2010 AUG 9 PM 2 51

CASE NO. CV08-392

BY [Signature] DEPUTY

Attorneys for Defendants
EARL A. LAWRENCE and SANDRA L. LAWRENCE

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

FRANK RONALD MAREK and)
GAYLE MAREK, husband and wife,)
and SANDRA WORTHINGTON, a)
married woman,)

Plaintiffs,)

vs.)

EARL A. LAWRENCE and SANDRA)
L. LAWRENCE, husband and wife, and)
ROBERT C. JOHNSON, a married)
man, et al.,)

Defendants.)

CASE NO.: CV2008-392

AFFIDAVIT OF MARK S. SNYDER IN
SUPPORT OF DEFENDANTS'
MOTION TO AMEND
COUNTERCLAIM

STATE OF IDAHO)
) ss.
County of Lewis)

I, MARK S. SNYDER, being first duly sworn to oath, depose and say the following:

That your affiant is a citizen of the United States; that I am over the age of 21 years; that I

AFFIDAVIT OF MARK S. SNYDER

1

74.
ORIGINAL

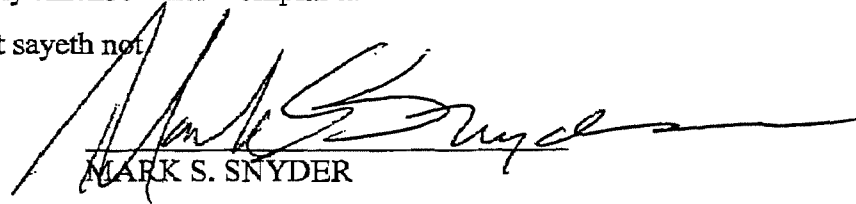
have personal knowledge of the facts stated herein; and therefore am competent to make this affidavit. That your affiant is the attorney for the Defendants in the above-entitled matter.

That your affiant states as follows:

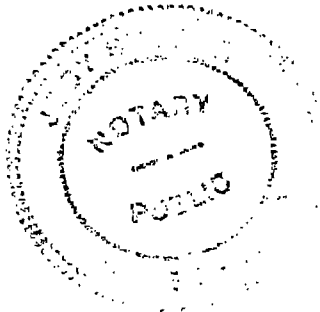
1. New evidence has been discovered giving rise to allegations of boundary by agreement.


2. Plaintiffs recently amended their complaint.

FURTHER your affiant sayeth not


MARK S. SNYDER

SUBSCRIBED and SWORN to before me this 9th day of August, 2010.





Notary Public

Commission expires: January 24, 2014

CERTIFICATE OF DELIVERY

I hereby certify that I caused a true and correct copy of the foregoing to be:

☒ mailed, postage prepaid;
☐ hand delivered;
☒ facsimile transmitted

On this 9th day of August, 2010, to:

Paul Thomas Clark
Clark & Feeney
P.O. Drawer 285
Lewiston, ID 83501

By: 
JODY SNYDER

AFFIDAVIT OF MARK S. SNYDER

CARNE BIRD
CLERK-DISTRICT COURT
CLEARWATER COUNTY
BOOFING, IDAHO

2010 AUG 10 AM 11:23

CASE NO. 2008-392

BY [Signature] DEPUTY

PAUL THOMAS CLARK
Idaho State Bar No. 1329
CLARK and FEENEY
Attorneys for Plaintiffs
The Train Station, Suite 201
13th and Main Streets
P. O. Drawer 285
Lewiston, Idaho 83501
Telephone: (208)743-9516

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

FRANK RONALD MAREK and GAYLE)
MAREK, husband and wife,)
Plaintiffs,)

Case No. CV 2008-392

vs.)

**MEMORANDUM IN OPPOSITION
TO SECOND MOTION FOR
SUMMARY JUDGMENT**

EARL A. LAWRENCE and SANDRA L.)
LAWRENCE, husband and wife, and)
ROBERT C. JOHNSON, a married man,)
SANDI WORTHINGTON, a married woman)
et. al.,)
Defendants.)

COMES NOW, the above-named Plaintiffs, by and through their attorney of record, Paul
Thomas Clark, of the Law Offices of Clark and Feeney, and respectfully submits the following
Memorandum in Opposition to Second Motion for Summary Judgment.

MEMORANDUM IN OPPOSITION TO SECOND MOTION FOR SUMMARY JUDGMENT -1-

LAW OFFICES OF
CLARK AND FEENEY, LLP

80.

ARGUMENT

A. STANDARD OF REVIEW

Summary judgment is appropriate only when there is no genuine issue of material fact and only after the pleadings, depositions, admissions, and affidavits show that there is no genuine issue as to any material fact. I.R.C.P. 56(c). The burden of proving the absence of an issue of material fact rests at all times upon the moving party. *Blickenstaff v. Clegg*, 140 Idaho 572, 577, 97 p.3d 439, 444 (2004) (citations omitted). To meet this burden the moving party must challenge in its motion, and establish through evidence, that no issue of material fact exists for an element of the nonmoving party's case. *Id.* The facts are to be liberally construed in favor of the party opposing the motion, who is also to be given the benefit of all favorable inferences which might be reasonably drawn from the evidence. *Anderson v. Ethington*, 103 Idaho 658, 651 P.2d 923 (1982); *Moss v. Mid-America Fire & Marine Ins. Co.*, 103 Idaho 298, 647 P.2d 754 (1982). If reasonable persons could reach different findings or draw conflicting inferences from the evidence, the motion must be denied. *Wade Baker & Sons Farms v. Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints*, 136 Idaho 922, 42 P.3d 715 (2002).

B. THREE BEAR ROAD DISPUTE

Defendants' Motion for Summary Judgment on their Adverse Possession Claim should be Denied.

As the Court is aware, the Defendants have previously filed a motion for summary judgment claiming that they are entitled to summary judgement on an adverse possession theory with regards to the Three Bear Road dispute in this matter. This Court denied said motion stating that the existence of Three Bear Road between the properties "suggests that either the parties presumed the

road followed the section line as it does throughout most of its length, or that the predecessors of the Mareks and Lawrences were aware of the deviation and reached a mutual understanding with respect to the disputed property. In either event, a claim of adverse possession will not withstand scrutiny. In the former case, the possession is not open, notorious, and hostile. In the later case, a boundary by agreement rather than adverse possession is implicated." *See Memorandum Decision and Order*, pg. 6.

The Defendants' claim for adverse possession is governed by I.C. 5-210. As pled by the Defendants, to be successful in their claim, this statute requires the Defendants to have cultivated the disputed strip near Three Bear Road and paid the taxes levied on the disputed strip for twenty (20) continuous years. In addition to the requirements of I.C. 5-210, the Defendants must also show that the cultivation of the disputed strip near Three Bear Road has been actual, open, visible, notorious, continuous and hostile to the Plaintiffs and their predecessors in interest. *See Luce v. Marble*, 142 Idaho 264, 272, 127 P.3d 167, 175 (2005). The Defendants must establish all of these elements by clear and satisfactory evidence. *Id.*

The Defendant's newest position is that Three Bear Road should be the property line under the boundary by agreement theory. That not only could boundary by agreement be implied but in actuality there is an express boundary line agreement pursuant to a right of way deed that was recorded. But, if the Court cannot find boundary by agreement that, as a matter of law, all the elements of adverse possession have been met and the Defendants should prevail on that theory.

Keeping in mind that the Defendants have failed to properly get the Court's permission to amend their counterclaim to include a boundary by agreement claim and that the affidavits submitted

1 by the Defendants in support of their second motion for summary judgment contain almost no
2 admissible evidence, the Defendants' second attempt to get summary judgement based on adverse
3 possession must also be denied.

4 The Defendants have not paid taxes on the property nor have the Defendants established that
5 an exception to the tax payment requirement is applicable. With all due respect to the Court, it does
6 not appear that it addressed the tax payment issue in its previous decision. It appears that the Court
7 held that adverse possession was not applicable because the Defendants had not shown that the
8 Defendants' possession was open, notorious, and hostile. The Plaintiffs do not disagree with that
9 conclusion but in addition assert that adverse position is appropriate because the Defendants have
10 not paid the taxes on the property and no exception is applicable. On page 9 of their *Memorandum*
11 *of Law in Support of Defendants' Second Motion for Summary Judgment*, the Defendants cite a
12 general proposition regarding the lot number exception to the tax requirement. However as
13 addressed in Plaintiffs' *Memorandum in Opposition to Motion For Summary Judgment*, the lot
14 number exception is factually impossible for the Defendants to establish. The key aspect to the lot
15 number exception is that it must be impossible to determine from the tax assessment record the
16 precise quantum of property being assessed. *See Baxter v. Craney*, 135 Idaho 166, 171, 16 P.3d 263,
17 268 (2000). As addressed in prior briefing, it is not impossible to determine the precise quantum of
18 property being assessed in this matter and as such, the lot number exception does not apply.
19

20
21 Additionally, the Defendants still have not offered sufficient proof that their alleged
22 possession was open, notorious, and hostile. None of the affidavits in support of the Defendants'
23 second motion offer support for that issue. There was no factual support for the first motion and
24

25
26 **MEMORANDUM IN OPPOSITION TO SECOND MOTION FOR SUMMARY JUDGMENT -4-**

1 there is no factual support for the second motion. Defendants are required to prove every element
2 of adverse possession by clear and satisfactory evidence. *Berg v. Fairman*, 107 Idaho 441, 443, 690
3 P.2d 896, 898 (1984). Idaho cases also hold "the burden of claimant to show possession of disputed
4 property was hostile to that of the real owner and not with the permission of the real owner since
5 "occupation without hostile intent" does not constitute adverse possession." *Id.* at 443, 690 P.2d at
6 898. With all due respect to the Defendants, they cite to *Berg, supra* and state that "hostile
7 occupation simply means sufficiently open and notorious to give notice to the true owner who has
8 not given permission to occupy." Plaintiffs have read that case thoroughly and cannot find a such
9 a definition in said case. The Defendants are treating adverse possession and boundary by agreement
10 as alternative theories but each theory contains elements that are fatal to each other. Boundary by
11 agreement requires permission, express or implied. Adverse possession requires that possession be
12 open, notorious, and hostile. The same facts cannot support possession with permission and
13 possession that is open, notorious, and hostile. Adverse possession requires the Defendants to have
14 actually known that they were in possession of the Plaintiffs' property. Boundary by agreement
15 requires a boundary line that is uncertain or in dispute. The same facts cannot support both theories.
16
17

18 The Defendants claim they have adversely possessed all the disputed property to the Three
19 Bear Road. However, according to Plaintiff Frank Marek, not all of this property is cultivated. An
20 access road is on the disputed property and the Plaintiffs use this access road frequently.
21 Additionally, the property between the access road and Three Bear Road is not being used by the
22 Defendants. Clearly the Defendants have failed once again to offer any factual support that their
23 alleged occupation of the disputed property was hostile and notorious.
24
25
26

Defendants have not offered any new facts to support their motion for summary judgement based on adverse possession. Defendants have not shown that they possessed the Plaintiffs' property in an open, notorious, and hostile manner nor have they shown that one of the tax exception applies. The facts do not support an order in favor of summary judgement based on adverse possession. Such an order would require the Court to improperly infer and assume facts not in the record, and as such, the Plaintiffs respectfully request that the Court deny the Defendants' Second Motion for Summary Judgement on the adverse possession claim.

Defendants' Motion for Summary Judgment on their Boundary by Agreement Claim should be Denied.

Again noting that the Defendants have failed to get the needed permission from this Court to assert a boundary by agreement claim, and without waiving any objection by responding to the substantive merits, the Defendants claim for boundary by agreement must also be denied.

The Defendants allege that this Court can find either an express boundary by agreement or an implied boundary by agreement. Boundary by agreement or acquiescence has two elements: (1) there must be an uncertain or disputed boundary and (2) a subsequent agreement fixing the boundary. *Downey v. Vavold*, 144 Idaho 592, 595, 166 P.3d 382, 385 (2007). Idaho case law demonstrates that an agreement, either express or implied, must exist to establish a boundary by agreement or acquiescence. *Id.*

Defendants position that the Right of Way Deed between Wayne Johnson and Clearwater County recorded December 9, 1974, is a express boundary agreement and establishes the boundary line is without merit. First of all the Defendants are not privy to that Deed. Said alleged deed is between Wayne Johnson and the County. Boundary by agreement requires an agreement between

1 the parties or their predecessors in interest. The Defendants are not parties to the Deed nor is the
2 County a predecessor in interest.

3 More importantly is that the Right of Way Deed is invalid. According to the Defendants, on
4 January 7, 1974, Wayne Johnson conveyed what is now the property owned by the Plaintiffs and the
5 Defendants to Robert Johnson and retained a life estate for himself. On November 26, 1974, the
6 County sent Wayne Johnson the proposed Right of Way Deed which Wayne subsequently signed
7 and was recorded on December 9, 1974. At the time the Right of Way Deed was executed by Wayne
8 Johnson he only had a life estate in said properties. Wayne had no right as a life tenant to execute
9 the Right of Way Deed and thus its invalid. Life tenants only have the power to divest their interest
10 to another and Wayne clearly exceeded his interest. As such the Right of Way Deed is invalid
11 because of Wayne's inability to execute the same and for purposes of this case, said instrument
12 cannot act as any sort of express agreement fixing a boundary line. After Wayne divested his interest
13 and only retained a life estate he did not have any authority to enter into any agreement regarding
14 boundary lines.
15

16 Neither can there be an implied boundary by agreement in this matter. Boundary by
17 agreement requires an uncertain or disputed boundary followed by a subsequent agreement fixing
18 that boundary. The Defendants have not offered any evidence that there was an uncertain or disputed
19 boundary in this matter prior to this action. Without an uncertain or disputed boundary, boundary
20 by agreement cannot be applicable.
21

22 The Defendants claim that Three Bear Road is the monument that should act as the dividing
23 line between the properties. However, it must be pointed out that typical boundary by agreement
24
25

1 cases require on of the parties to erect the monument. In this case obviously neither party or their
2 predecessors built the Three Bear Road. Furthermore there again is no evidence that the boundary
3 was uncertain or in dispute before Three Bear Road was built.

4 Finally, the Defendants have not offered any evidence that the Plaintiffs have "acquiesced"
5 to Three Bear Road being the boundary. Plaintiffs frequently use the access road that is located in
6 the disputed area. It also needs to be pointed out that a section of the property in dispute is also not
7 used by the Defendants. Furthermore, "acquiescence" is not conclusive proof of a implied boundary
8 by agreement. *See Downey* at 596, 166 P.3d at 386.


9 Boundary by agreement is not an applicable theory in this case. The Right of Way Deed is
10 invalid and does not constitute a express boundary agreement. Additionally, the facts do no support
11 an implied boundary agreement using Three Bear Road as the monument. There is no evidence that
12 the property line was uncertain or in dispute until this action arose nor have the Defendants
13 exclusively used the property. Furthermore there is a section of disputed property not used by the
14 Defendants. Boundary by agreement is not an appropriate holding at any stage but certainly is not
15 appropriately decided on summary judgment. Questions of acquiescence, at the very least exist.

16 CONCLUSION

17 Based on the foregoing the Plaintiffs' respectfully urge the Court to deny the Defendants'
18 Second Motion for Summary Judgment.

DATED this 9 day of August, 2010.

CLARK AND FEENEY


By: 
Paul Thomas Clark
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9 day of August, 2010, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Mark S. Snyder
PO Box 626
Kamiah, ID 83536

<input checked="" type="checkbox"/>	U.S. Mail
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input type="checkbox"/>	Telecopy

By: 
Attorney for Plaintiffs

CARRIE BIRD
CLERK-DISTRICT COURT-
CLEARWATER COUNTY
OROFINO, IDAHO

MARK S. SNYDER, ISB #5760
Attorney at Law
220 N. Hill Street
P. O. Box 626
Kamiah, ID 83536
Telephone 208-935-2001
Facsimile 208-935-7911

2010 JUL 26 PM 2 45

CASE NO. W08-392

BY CS DEPUTY

Attorneys for Defendants
EARL A. LAWRENCE and SANDRA L. LAWRENCE

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

FRANK RONALD MAREK and)
GAYLE MAREK, husband and wife,)
and SANDRA WORTHINGTON, a)
married woman,)

Plaintiffs,)

vs.)

EARL A. LAWRENCE and SANDRA)
L. LAWRENCE, husband and wife, and)
ROBERT C. JOHNSON, a married)
man, et al.,)

Defendants.)

CASE NO.: CV2008-392

AFFIDAVIT OF R.C. JOHNSON

STATE OF IDAHO)
County of Ada) ss.

I, R.C. JOHNSON, being first duly sworn to oath, depose and say the following:

That your affiant is a citizen of the United States; that I am over the age of 21 years; that I

AFFIDAVIT OF R.C. JOHNSON

1

89.
ORIGINAL

have personal knowledge of the facts stated herein; and therefore am competent to make this affidavit.

That your affiant states as follows:

1. By 1949 my father, Wayne Johnson had acquired the two parcels of land described herein as Parcel 1 (20 Acres West of Three Bear Road), and Parcel 2 (80 acres East of Three Bear Road). Parcel 1 is legally described as E1/2NE 1/4 SE 1/4 of Section 27, and Parcel 2 is legally described as the N1/2 SW 1/4 Section 26, both in T38N R1W of the Boise Meridian. Parcel 1 is now owned by Tom and Gayle Marek and Parcel 2 is now owned by Earl Lawrence.

2. An aerial photograph of the subject land was part of my father's Conservation Farm Plan of 1949. The photograph, attached hereto as Exhibit "A" shows the physical location of Three Bear Road, circa 1949. The aerial photo attached hereto as Exhibit "B", obtained from Clearwater County, shows the location of road after it was modified in the early 1970s.

3. In 1949 the land usage shown in the Exhibit "A" photo was quite different than today as the 0.7 acre neck of land near the disputed quarter corner had not been cleared. Three Bear Road deviated significantly from its location today. My Father and I began clearing the roughly 0.7 acres of land in the northwest corner of Parcel 2 at that time. Our clearing of the land was by no means completed at that time and later in the Mid 1950's completed by George Finke who farmed the land for my father.

4. Sometime between 1950 and 1960 the farm cultivation in the northwest corner of Parcel 1 was moved slightly west to the east side of what was then a crude access road into the northwest corner of Parcel 2. The recently taken photograph attached hereto as Exhibit "C" shows this access road and the farm line. The photo was taken from the center of Three Bear Road looking North. In the 1950s and for many years subsequent, a square concrete monument existed near the west edge of the access road on Parcel 2. The individual in the photo is Earl Lawrence and he is standing approximately where the concrete monument existed, marking the N1/4 corner common to Sections 26, and 27.

5. I prepared a drawing on an aerial photo graph of the disputed corner, attached as Exhibit "D". The approximate location of that monument is Point 2 on the

photograph, situated just west of the current access road shown in the photo.

6. In the 1960s Daisy Stage, grandmother of and predecessor in interest to, Gayle Marek, owned property adjacent to and North of Parcel 2—specifically, the SW1/4NW1/4 of Section 26. Daisy approached my father for permission to use the access road on Parcel 1 for the purpose of logging timber from her property to the north. My father gave her such permission and the access road was improved to facilitate logging trucks and equipment. At that point in time the monument (Point 2, Exhibit “D”) still existed and my father owned both Parcel 1 and 2.

7. In late 1972 or early 1973 The Clearwater County Road Department approached my father for permission to realign the Three Bear Road between his Parcels 1 and 2 along the north half line of Parcel 2. Permission was granted and the county surveyor produced a survey description to my father in 1974 after the road work was completed. The letter from Vern Lamphier, Clearwater County Road Supervisor is attached hereto as Exhibit “E”. This “Right of Way Deed” was recorded at Clearwater County as Doc 108078 in December of 1974, a copy of which is attached as Exhibit “F”. It is clear to me that a monument was found and used as a reference point to describe the road realignment of 1973. The as-found location is shown in Exhibit “D”, Point 2.

8. I am an engineer and am competent to plot the legal description on the Right of Way Deed my father gave the County. Hence I have drawn the 60 foot right of way described on the Right of Way Deed (Instrument No. 108078) on the aerial photo, Exhibit “F”. This photo also shows how closely the 1974 Right of Way Deed description aligns with the actual road work using the location of the cement monument.

9. From 1973 until I sold Parcel 1 to Laura Adamson in 1985, the cultivation on Parcel 2 continued in line with the cement corner monument, west of the access road.

10. In 1985 Laura Adamson had written several letters to me expressing an interest in purchasing Parcel 1. In 1985, I traveled to personally visit with Laura Adamson (Gayle Marek’s mother) and Daisy Stage at their new modular home for the purpose of discussing a possible sale of Parcel 1. At the conclusion of the discussion Daisy Stage asked it was ok to continue the use of the access road onto her property to the north. I told Laura and Daisy I saw

91.

no problem in their continued use of the access road so long as it did not interfere with the farm cultivation location of Parcel 2.

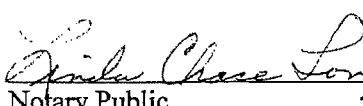
11. I prepared the Warranty Deed for the conveyance of Parcel 1 to Laura Adamson, recorded August 9, 1985. A copy of this deed is attached hereto as Exhibit "G". The language, "Less 1.06 Ac Road Right of Way in Section 27 recorded No. 108078", was intended to identify the East boundary of the property conveyed, with respect to the location of the existing Three Bear Road and right of way. It was my intention to identify the North 1/4 corner common to Parcel 1 (conveyed to Adamson) and Parcel 2 (which I continued to own) as being approximately 50 feet East of the center of Three Bear Road—per the Right of Way Deed prepared by the County in 1974. It was agreed between Laura Adamson and me at the time of conveyance to Adamson that this was the North corner (West of the access road) on the line separating our properties—Parcel 1 and Parcel 2.

12. The accepted land use, based on the concrete corner continued up to the time I sold Parcel 1 in 1985 to Daisy and Laura. In 1994 when I sold Parcel 2 to Earl Lawrence, I toured the land at the time of sale. I observed continued land use for cultivation out to about 10 feet east of the east edge of the access road. In 2010 this accepted point of land use has remained essentially unchanged and in 2010 lies about 6 feet east of the east side of the access road. The concrete monument (apparently found in the 1974 survey) no longer can be found, presumable removed by parties unknown. The Marek property to the North however continues to use the accepted land use, Exhibit "D", Point 2, as evidenced by their fence running north, starting at Point 2, i.e. the existing fence corner is just west of the access road.

FURTHER your affiant sayeth not.


R.C. JOHNSON

SUBSCRIBED and SWORN to before me this 24th day of July, 2010.

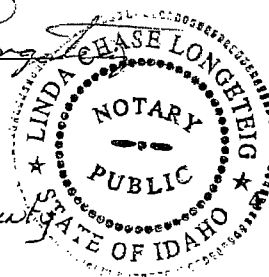

Notary Public

Commission expires:

3-15-2011

AFFIDAVIT OF R.C. JOHNSON

Residing in Ada County



CERTIFICATE OF DELIVERY

I hereby certify that I caused a true and correct copy of the foregoing to be:

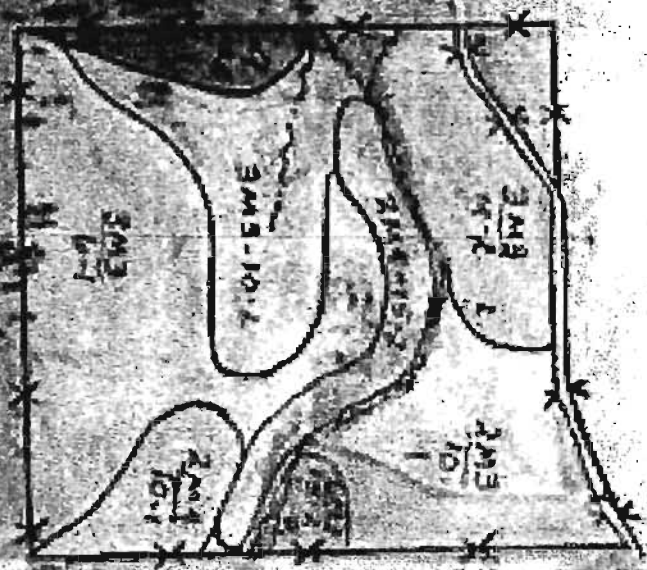
☒ mailed, postage prepaid;
☐ hand delivered;
facsimile transmitted

On this 26th day of July, 2010, to:

Paul Thomas Clark
Clark & Feeney
P.O. Drawer 285
Lewiston, ID 83501

By: _____

JODY SNYDER



Three Bear Rd

Disrupted
Contact

Q24



LITTLE CEDAR RD

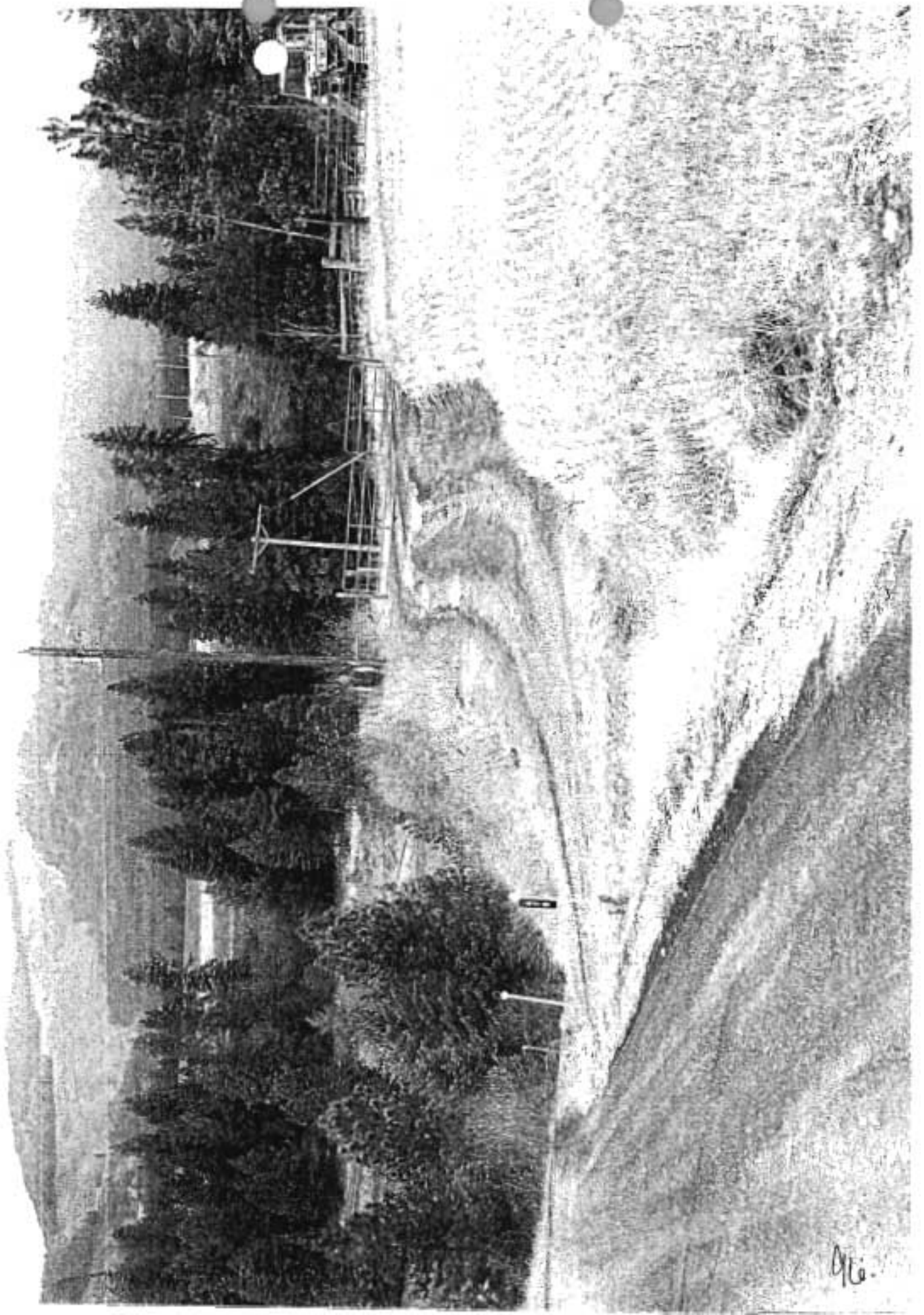
THREE BEAR RD

MAISON BUTTE RD

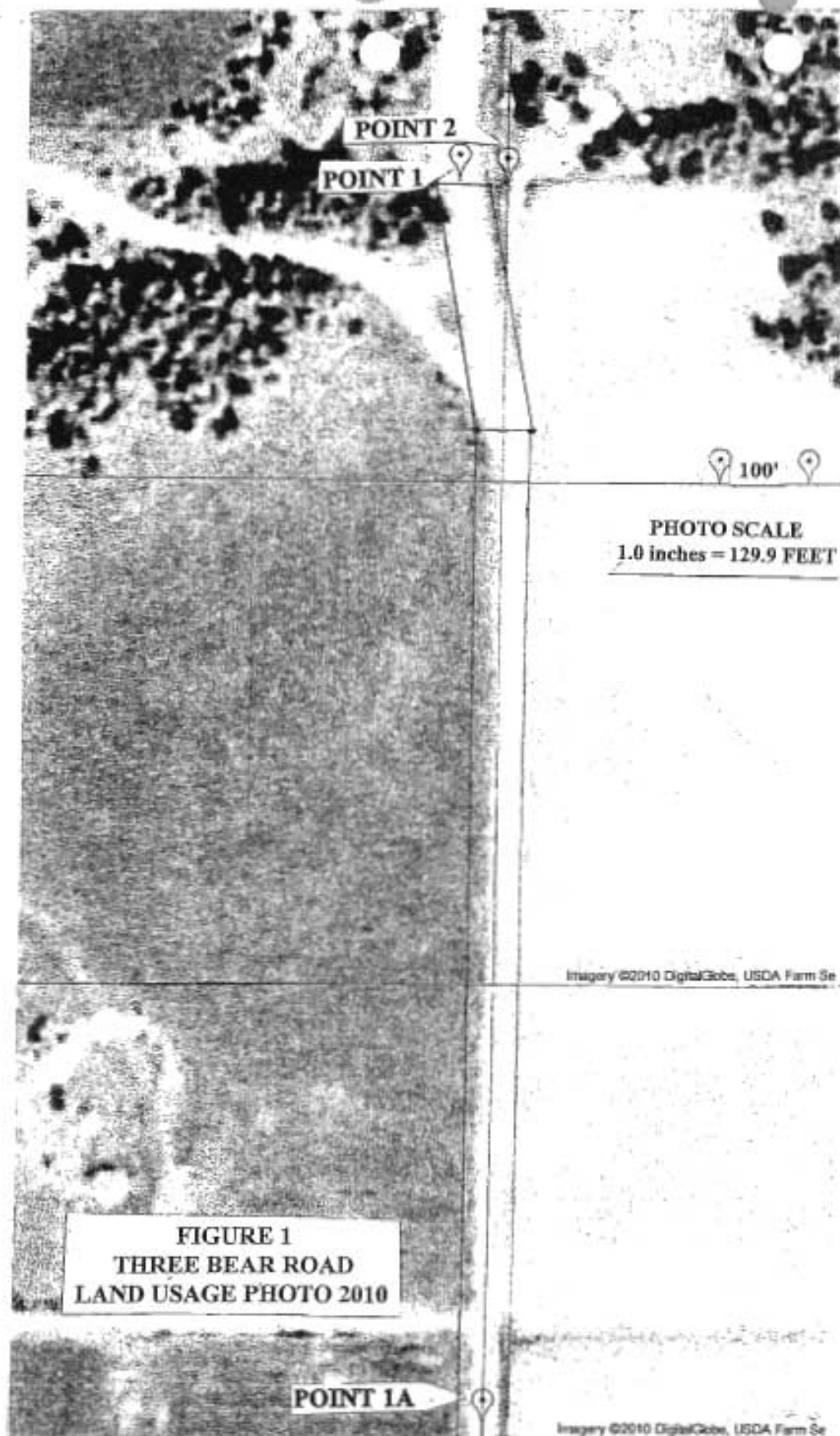
JETER CANDLER RD

CAVENDISH HWY

EXHIBIT "R"



96.



CLEARWATER COUNTY ROAD DEPARTMENT

VERNON LANPHIER, SUPERVISOR

TELEPHONE 472-2151

BOX 812

OROFINO, IDAHO 83544

November 26, 1974

Mr. Wayne Johnson
Orofino
Idaho 83544

Dear Wayne;

Please find enclosed a description of the County Road
right-of-way along your land as we previously discussed.

If this meets your approval, return the enclosed
Right of Way Deed to the Auditors office to be notarized
and filed at no expense to you.

Sincerely,



Vernon E. Lanphier
Clearwater County Road Supt.

VL/bl

108078

RECEPTION
INDEXED
FILMED
DELIVERED
MAILED

RIGHT OF WAY DEED

KNOW ALL MEN BY THESE PRESENTS, that Wayne Johnson

of Orofino, County of Clearwater, State of

Idaho first party, for and on account of the certain benefits to him accruing, and of other valuable considerations, and the sum of One and no/100ths Dollars, (\$1.00) to him in hand paid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the Clearwater County, second party, as and for a right of way for a public highway, the following described parcel of land situated in the County of Clearwater in the State of Idaho, of which grantor Wayne Johnson the owner, to wit:

A part of the NWSW 1/4 of Section 26 T38N R1W and part of the NESE 1/4 of Section 27 T38N R1W Clearwater County State of Idaho, and other described as follows:

Commencing at the 1/4 corner common to sections 26 and 27, thence, West 20 feet to the TRUE POINT OF BEGINNING, thence;
West, 60 feet;
South 90° 30' East, 300 feet;
East, 60 feet;
North 90° 30' West, 300 feet to the TRUE POINT OF BEGINNING and being an area of 0.40 acres, more or less.

Also a tract of land comprising the existing County road right of way and described as follows:

Commencing at the 1/4 corner common to Sections 26 and 27, thence South 299 feet to the TRUE POINT OF BEGINNING, thence;
West, 30 feet;
South, 1021 feet, more or less, to the South 1/16 line of NESE 1/4;
East, 60 feet;
North, 1021 feet;
West, 30 feet to the TRUE POINT OF BEGINNING and comprising an area of 1.40 acres, more or less.

Excepting that portion already dedicated by public use or otherwise as a public road, a new right of way required being approximately 2.04 acres of the 160 & 20 acres above described.

There is also granted hereby an easement adjacent to the above described highway right of way for relocation of all irrigation and drainage ditches and structures and such surface drain ditches as may be necessary to the proper construction of the highway.

TO HAVE AND TO HOLD, The same unto the Clearwater County for the purpose of a public highway forever, but whenever such land shall cease being used for highway purposes the land shall revert to the owner or his heirs or assigns.

STATE OF Idaho)
County of Clearwater) ss

Wayne A. Johnson

On this 9 day of December, 1971, before me, the undersigned, Wayne Johnson in and for said State, personally appeared Wayne Johnson, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Gayle Hayden, Clerk of the District Court
by Donna Thomas Deputy
Notary Public in and for the State
of Idaho Residing at Orfino
Clearwater County.

100-228
FILED ON RECORD
GAYLE HAYDEN
CLERK, RECORDER & CLERK

1971 DEC -9 PM 2:42

CLEARWATER COUNTY CLERK
BY Donna Thomas DEPUTY
REQUESTED BY _____

(Optional)

Recorded ☐
 Microfilmed ☐
 Indexed ☐

Platted ☐
 Deed Card ☐
 Compared ☐

Key Punched ☐
 Master File ☐
 Abstracted ☐

To Treasurer ☐

(DO NOT WRITE ABOVE THIS LINE)

WARRANTY DEED

ROBERT C. JOHNSON

of MERIDIAN County of ADA
 hereby CONVEYS, GRANTS and WARRANTS TO

GRANTOR(S)
 State of Idaho

LAURA B. ADAMSON

whose current address is Rt #1 KENDRICK, IDAHO 83552
 for the sum of Twenty Four Thousand Nine Hundred Sixty

GRANTEE(S)

Dollars (\$24,960⁰⁰)

the following described tract(s) of land in CLEARWATER

County, State of Idaho:

SEC 27, T38N, R1W

E 1/2 NESE, LESS S 36', AND

LESS 1.06 AC ROAD RIGHT OF WAY IN SEC 27

RECORDED NO 108078

filed with the County Clerk of Clearwater County, Idaho
 at 12:00 P.M. on August 19, 1985
 by Allen Medalen, Notary Public
 Clearwater County, Idaho
 Part 200
 Return: Rt 1 Box 1052
 Kendrick, ID 83537

2 1/2 MI. EAST

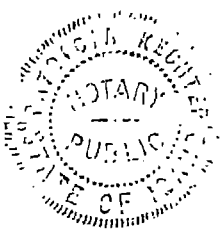
Location of above described property — SOUTHWICK, IDAHO

WITNESS the hand of said Grantors this

day of

A.D. 19

(NOTARY SEAL)



State of Idaho
 County of ADAH

} ss. On the 8th day of August A.D. 1985

personally appeared before me Robert C. Johnson

the signer(s) of the within instrument, who duly acknowledged to me that he
 executed the same.

Residing at:

Julietta

My Commission expires: 12/12/87

MAIL DEED TO:

MAIL TAX NOTICE TO:

Name

Address

City & State

MARK S. SNYDER, ISB #5760

Attorney at Law

220 N. Hill Street

P. O. Box 626

Kamiah, ID 83536

Telephone 208-935-2001

Facsimile 208-935-7911

CARRIE BIRD
CLERK-DISTRICT COURT
CLEARWATER COUNTY
CROFTON, IDAHO

2010 JUL 26 PM 2 45

CASE NO. CV08-392

BY QD DEPUTY

Attorneys for Defendants

EARL A. LAWRENCE and SANDRA L. LAWRENCE

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER**

**FRANK RONALD MAREK and
GAYLE MAREK, husband and wife,
and SANDRA WORTHINGTON, a
married woman,**

Plaintiffs,

vs.

**EARL A. LAWRENCE and SANDRA
L. LAWRENCE, husband and wife, and
ROBERT C. JOHNSON, a married
man, et al.,**

Defendants.

CASE NO.: CV2008-392

**AFFIDAVIT OF CLINTON
FREDERICKSON IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT**

STATE OF IDAHO)
) ss.
County of Clearwater)

I, CLINTON FREDERICKSON, being first duly sworn to oath, depose and say the following:

That your affiant is a citizen of the United States; that I am over the age of 21 years; that I have personal knowledge of the facts stated herein; and therefore am competent to make this

102.
ORIGINAL

affidavit. That your affiant is not a party in the above-entitled matter.

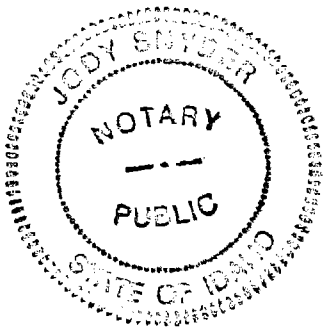
That your affiant states as follows:

1. I reside at 8382 Cavendish Highway, Clearwater County Idaho. I have resided in Clearwater County for more than 60 years.
2. I worked as an equipment operator for Clearwater County in the early 1970s and recall that I purchased a nearly new 1973 Ford Pickup at the time I was working for the County.
3. Sometime in the early 1970s I recall working on Three Bear Road between Cavendish and Southwick, Idaho. Part of the project was to straighten the road and decrease the slope of the road at or near the North 1/4 corner common to Section 26 and 27, Township 38 North, Range 1 West, B.M. I recently visited this site to help me remember the work we did.
4. At that point Three Bear Road turned slightly to the West and dropped down a steep incline to Cedar Creek to the North. We did a substantial amount of drilling and blasting on the East side of the road to remove material, lower the road bed and move it slightly East at the top of the hill so the drop down to Cedar Creek was not so steep.
5. We also modified the intersection with Cedar Creek Road just South of the North 1/4 corner common to Section 26 and Section 27.
6. The aerial photo attached hereto as Exhibit "A" shows Three Bear Road before the modification in the early 1970s. Exhibit "B" attached hereto shows Three Bear Road at its junction with Little Cedar Road after the road work described above.

FURTHER your affiant sayeth not.

Clinton Frederickson
CLINTON FREDERICKSON

SUBSCRIBED and SWORN to before me this 19th July day of ~~October~~, 2010.



Jody Snyder
Notary Public
Commission expires: 1-24-14

CERTIFICATE OF DELIVERY

I hereby certify that I caused a true and correct copy of the foregoing to be:

- ☒ mailed, postage prepaid;
☐ hand delivered;
☐ facsimile transmitted

On this 26th day of July, 2010, to:

Paul Thomas Clark
Clark & Feeney
P.O. Drawer 285
Lewiston, ID 83501

By: _____

JODY SNYDER





EXHIBIT "B"

CARRIE BIRD
CLERK-DISTRICT COURT
CLEARWATER COUNTY
OROFINO, IDAHO

MARK S. SNYDER, ISB #5760

Attorney at Law
220 N. Hill Street
P. O. Box 626
Kamiah, ID 83536
Telephone 208-935-2001
Facsimile 208-935-7911

2010 JUL 26 PM 2 44

CASE NO. CV08-392

BY JD DEPUTY

Attorneys for Defendants
EARL A. LAWRENCE and SANDRA L. LAWRENCE

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

FRANK RONALD MAREK and)
GAYLE MAREK, husband and wife,)
and SANDRA WORTHINGTON, a)
married woman,)

Plaintiffs,)

vs.)

EARL A. LAWRENCE and SANDRA)
L. LAWRENCE, husband and wife, and)
ROBERT C. JOHNSON, a married)
man, et al.,)

Defendants.)

CASE NO.: CV2008-392

MOTION FOR SUMMARY
JUDGMENT

COMES NOW the above-named defendants, by and through their attorney of record,
Mark Snyder, and moves this Court for summary judgment, against plaintiffs.

This motion is brought pursuant to I.R.C.P. §56(b) and is supported by the Memorandum
of Law filed herewith, the Affidavits of R.C. Johnson and Clinton Frederickson and the court file
in this matter.

MOTION FOR SUMMARY JUDGMENT

1

108
ORIGINAL

Oral argument is requested.

DATED this 26 day of July, 2010.

By: 

MARK S. SNYDER
Attorney for Defendants

CERTIFICATE OF DELIVERY

I hereby certify that I caused a true and correct copy of the foregoing to be:

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On this 26th day of July, 2010, to:

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By: 

JODY SNYDER

CARNE BIRD
CLERK-DISTRICT COURT
CLEARWATER COUNTY
OROFINO, IDAHO

2010 JUL 26 PM 2 44

CASE NO. CV08-392

BY JD DEPUTY

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Attorneys for Defendants
EARL A. LAWRENCE and SANDRA L. LAWRENCE

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
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L. LAWRENCE, husband and wife, and)
ROBERT C. JOHNSON, a married)
man, et al.,)
Defendants.)

CASE NO.: CV2008-392

MEMORANDUM OF LAW IN
SUPPORT OF DEFENDANTS'
SECOND MOTION FOR SUMMARY
JUDGMENT

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT

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110.
ORIGINAL

I.

BACKGROUND

This is the second motion for summary judgment filed by the Defendants. The first sought judgment establishing two boundary lines between parcels of property owned by the respective parties. These boundary disputes resulted from a recent survey by Ben Johnson, Cuddy and Associates, which found lines inconsistent with decades of agricultural use.

A. THE TARRY/PAVEL LINE¹:

This boundary line dispute came to the court in the form of a motion for preliminary injunction filed by the Mareks. The Mareks had removed a long existing fence and erected a new fence on the Cuddy survey line; roughly parallel to and several feet east of the old fence line through Lawrence's cultivated field. The court ruled from the bench at the end of an evidentiary hearing on November 24, 2008. Observing, "And so I think there is persuasive evidence that there was an agreed—at least as for purposes of this hearing, that there was an agreed boundary, and so I'm going to let the status be the original fence line until there is a determination on the merits", the court ordered the fence be replaced on the line of the original fence.

While there has been no determination on the merits, the fence was replaced on the original fence line² where it has remained for over a year. We assume there is no remaining dispute concerning the Pavel/Tarry line, but require a final order to that effect—the common boundary line is the original fence line.

¹ Refers to prior owners of these properties sharing a boundary line.

² The Cuddy survey tied the old fence, so they were able to stake the original line for rebuilding purposes.

B. THREE BEAR ROAD LINE:

This boundary in dispute is roughly parallel to, and/or on, the Three Bear Road right of way, which runs south to north between Section 26 and Section 27³. Lawrences own the North ½ of the NW 1/4 of Section 26. The Mareks own the East ½ of the NE 1/4 of the SE 1/4 of Section 27 (and other contiguous property to the west). The North corner, in dispute, is the North quarter corner common to Sections 26 and 27. The South corner of the boundary line is not in dispute. The Mareks claim the North corner of the boundary line is approximately 65 feet East of where the Lawrences claim the corner to be. The disputed area is a triangle, with the leg opposite the hypotenuse approximately 1,320 feet long.

The general terrain is flat except at the north end of the properties where there is a gentle up slope up to a minor ridge top running from higher elevation east to lower elevation west. Lawrence and predecessors have for many decades farmed the ground up to the east side of Three Bear Road from the south corner of the disputed boundary to near what they understood was the north corner of the disputed boundary. The Marek property has been used up to the west side of Three Bear Road for pasture. At the north end of the properties, Three Bear Road curves slightly to the west through a steep cut bank; then proceeds down a grade again in a northerly direction.

At this north end a dirt road leaves the east side of Three Bear Road to a gate on the north boundary line of the Lawrence Property, thereby providing a means of access to land to the north (now also owned by Mareks).

³ Township 38N, Range 1W, B.M.

A recent survey conducted by Cuddy and Associates surveyor Ben Johnson (Cuddy Survey) established the Marek's northeast corner—the quarter corner between Sections 26 and 27—sixty five or more feet east of the Lawrences' cultivation line. According to the Cuddy survey, the common boundary line—section line between 26 and 27—runs south from that northern point several hundred feet through Lawrences' farm field to a point where it contacts the Three Bear Road right of way, thereby creating an approximately one acre triangle of Lawrence farm ground between Three Bear Road and the Cuddy survey line, which the Mareks now claim to own. The Lawrences claim to own this triangle, including the above described access road. The Lawrences contend historical use of this road to access the property to the north has always been permissive and that it is on the Lawrence Property.

In its first motion for summary judgment, the Lawrences claimed and argued ownership of the disputed triangle by adverse possession.

The essential disagreement here is not whether the lot number exception is applicable, but rather whether the Lawrences have offered sufficient proof that their possession was open, notorious, and hostile to the interests of the Mareks and their predecessors.

The existence of a physical demarcation between the properties – Three Bear Road – suggests that either the partes presumed the road followed the section line as it does throughout most of its length, or that the predecessors of the Mareks and Lawrences were aware of the deviation and reached mutual understanding with respect to the disputed property. In either event, a claim of adverse possession will not withstand scrutiny. In the former case, the possession is not open, notorious, and hostile. In the latter case, a boundary by agreement rather than adverse possession is implicated.

Memorandum Decision and Order, May 27, 2009

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' SECOND MOTION FOR SUMMARY JUDGMENT**

Further research and investigation reveals the court's observations quoted above to be on target.

C. HISTORY OF THREE BEAR ROAD:

Three Bear Road was originally named Hays Road and came to be a public highway by petition dated May 2, 1889. The road, including the subject section of road, running from the Section corner common to Sections 26 and 27 at its southern point to the 1/4 Section corner common to Sections 26 and 27 at its northern point, was surveyed by the County Surveyor, W.R. Bell and the survey was made part of the petition. The Bell survey plat, attached hereto as Exhibit "A", shows the road running on the Section line common to Sections 26 and 27 to the common 1/4 corner, where it jogs to the West.

However, this was not where the road was built. The road looped well to the west near the disputed 1/4 corner around the ridge described above, then east, back to the north/south section line, where it again proceeded north on or near the section line.

A 1934, a plat of Three Bear Road⁴, referred to as "U.S. Public Works Project #178" (NRS 178) showed a diagram of the road on a line with the subject section line up to a point near the subject north 1/4 corner where the road was designed to curve on a line 18°11" West of North, then back to North/South line. A right of way deed was granted by the owner of property on both sides of Three Bear Road (James N. Fonburg) in Sections 26 and 27. This right of way deed described a 66 foot wide easement (33' from center) and referred to the plat.

⁴ May have still been called "Hays Road" at that time.

The NRS 178 modification of Three Bear Road never took place. We know from a comparison of aerial photos; one taken around 1949; the other recently⁵, along with the affidavits of Clinton Frederickson and R.C. Johnson which correspond with the Wayne Johnson to Clearwater County Right of Way deed (discussed below) that the road was modified near the disputed 1/4 corner sometime between 1972 and 1974. To straighten the road at this north end of the properties, it was necessary to drill, blast and excavate the gentle ridge described above so as to build the new section of road at roughly the same grade as the road to the south of this point. *Affidavit of Clinton Frederickson.* (Clearwater County road employee).

Prior to 1974, Wayne Johnson owned the property in Sections 26 and 27 on both sides of Three Bear Road between the above described common Section corner and 1/4 corner. He was asked to execute a "RIGHT OF WAY DEED" with a description of two rectangular parcels 60 feet wide by a total of 1320 feet long. The description of the northern rectangle calls from the 1/4 corner common to Sections 26 and 27 to a point of beginning 20 feet West of said corner, then continues to describe a 60 foot wide by 300 foot long rectangle at an angle 9.5 degrees East of South. The southern parcel is described as a 60 foot wide by 1021 foot rectangle with 30 feet lying on each side of the Section line common to Sections 26 and 27⁶.

R. C. Johnson recalls a cement monument West of the crude access road in a location consistent with the Right of Way Deed—50 feet East of road center. He recalls granting the

⁵ Exhibits "A", "B", *Affidavit of R.C. Johnson.*

⁶ See, Exhibits "D", "E", "F", *Affidavit of R.C. Johnson*

property owner to the North (Daisy Stage) permission to use the access road East of that monument in 1985.

A chronology of events:

Circa 1970-1973: At and near the 1/4 corner common to Section 26 and Section 27 (the NW corner of the Lawrence property and the NE corner of the Marek property) Clearwater County changed the line and elevation of Three Bear Road. See, *Affidavit of Clinton Frederickson*.

January 7, 1974: Wayne Johnson conveyed the subject properties on both sides of Three Bear Road to his son Robert Johnson as one contiguous tract by Warranty Deed, with a retained life estate. Instrument No. 108648.

November 26, 1974: Vernon E. Lamphier wrote to Wayne Johnson: "Please find enclosed a description of the County Road right-of-way along your land as we previously discussed. If this meets with your approval, return the enclosed Right of Way Deed to the Auditors office to be notarized and filed at no expense to you." Exhibit "E", *Affidavit of R.C. Johnson*.

December 9, 1974: The Right of Way Deed from Wayne Johnson to Clearwater County was recorded on this date. The description on the Deed calls from the subject 1/4 corner—West 20 feet from the East edge of the 60 feet right of way, which put the 1/4 corner 50 feet East of the center of the then, and now, existing road. Exhibit "F", *Affidavit of R.C. Johnson*. (Compare the Cuddy survey, which places this corner approximately 115 feet East of center of the road—well into the wheat field). Instrument No. 108078.

August 9, 1985: R.C. Johnson conveyed to Laura Adamson⁷ the approximately 20 acres immediately West of Three Bear Road in Section 27, the East boundary of which is now in dispute. The legal description on the Warranty Deed reads as follows: "Sec 27, 38N, 1W E1/2NESE, Less the S 36', and less 1.06 AC Road Right of Way in Sec 27, Recorded No. 108078." This referenced instrument was of course the Right of Way Deed described above. The Robert Johnson to Laura Adamson Warranty Deed is Instrument No. 141784. Exhibit "G", *Affidavit of R.C. Johnson*.

January 1, 1986: Earl Lawrence commenced farming the property East of Three Bear Road (as did his father Albert prior to this date) and continued farming the

⁷ Mother of Gayle Marek.

property to the East edge of Three Bear Road under this leasehold until he purchased the ground in 2006.

December 11, 1998: Earl and Sandra Lawrence entered into an agreement with R. C. Johnson to purchase the land East of Three Bear Road in Section 26 (N1/2SW1/4 of Section 26), and continue farming up to the East edge of Three Bear Road. Instrument No. 179945.⁸

December 12, 2003: Charles Adamson as personal representative of the estate of Laura Adamson conveyed the subject Three Bear Road property to a testamentary trust. The legal description on this deed, Instrument No. 194648 was later corrected by a Quit Claim Deed recorded on November 6, 2008. Neither deed made reference to the Right of Way Deed (No. 108078) as did the description in the deed from R.C. Johnson to Laura Adamson.

November 5, 2008: Cuddy & Associates recorded an Amended Record of Survey (Instrument No. 210157). The survey notes (Instrument No. 210158) of surveyor Ben Johnson state that he determined the Northeast corner of Section 27 was determined to be lost. He established this corner by double proportionate measurement⁹. The Cuddy survey line from the Northeast corner of Section 27 to the subject 1/4 corner and South as the disputed boundary between the property of the parties is significantly East of historical use of the respective properties.

II.

ARGUMENT

Boundary law has evolved to favor the owner who occupies, cultivates or improves property up to a line for a long period of time. Where a survey establishes a line inconsistent with usage, the theories of adverse possession or boundary by agreement may cause the line of occupation to prevail as the legal boundary.

A. ADVERSE POSSESSION:

⁸ It was later conveyed by Warranty Deed from Johnson to the Lawrences.

⁹ He doesn't say what accepted monuments he measured from.

IC §5-210 requires the adverse claimant to prove hostile occupation for more than 20 continuous years, during which time the ground must be substantially enclosed or cultivated and property taxes paid. There is no question as to occupation for twenty years and cultivation of the disputed ground. Hostile occupation and payment of taxes is disputed.

Hostile occupation simply means sufficiently open and notorious to give notice to the true owner who has not given permission to occupy. *Berg v. Fairman*, 107 Idaho 441, 690 P.2d 896 (Idaho 1984) . As noted above, the court previously observed that the facts suggest the occupation by Lawrences was pursuant to agreement with the Mareks. It is the Lawrences' contention that if there was no agreement fixing the disputed boundary line between coterminous owners in this case, all elements of adverse possession have been met as a matter of law.

Idaho has adopted a liberal construction of the tax payment requirement in cases of adverse possession pertaining to a boundary dispute.

[I]n the case of boundary disputes between contiguous landowners, where one landowner can establish continuous open, notorious and hostile possession of an adjoining strip of his neighbor's land, *and taxes are assessed by lot number or by government survey designation, rather than by metes and bounds description*, payment of taxes on the lot within which the disputed tract is enclosed satisfies the tax payment requirement of the ... statute."

Wilson v. Gladish, 140 Idaho 861, 103 P.3d 474 (Idaho App. 2004)

The legal descriptions of both Lawrences' and Mareks' property is aliquot part of government survey. Lawrence pays taxes on half of a quarter section – 80 acres. The tax payment requirement is therefore met in this case.

B. BOUNDARY BY AGREEMENT

Property owners have historically agreed on the location of a boundary line between their properties when there has been no survey and they are uncertain as to the exact location of the line.

The agreement establishing a boundary may be express or implied from the surrounding circumstances and conduct of the parties... Allowing adjoining landowner, without objection, to build improvements on the property is also evidence of an agreement. The period of acquiescence need not continue for the amount of time necessary to establish adverse possession because acquiescence is merely competent evidence of the agreement.

Trappett v. Davis, 102 Idaho 527, 532, 633 P.2d 592, 597 (1981).

All reported cases of boundary by agreement in Idaho arose from an implied agreement. Most cases involved use on one side of a line and acquiescence to such use by the owner on the other side of a line evidenced by a physical monument. And the monument, usually, but not necessarily was a fence. A farming line has been held to be a sufficient monument. *Griffel v. Reynolds*, 136 Idaho 397, 34 P.3d 1080 (Idaho 2001).

Since the sale of the Marek property on the West side of Three Bear Road—from R.C. Johnson to Laura Adamson in 1985, the Lawrences have used the property on the East side of Three Bear Road and Adamson; later the Mareks, have used the property on the West side of Three Bear Road¹⁰. This evidence would be sufficient for the court to infer that a boundary line agreement was in effect between these parties.

¹⁰ With the exception of the access road at the North end of the Lawrence property, which has been used by owners for access to property to the North with permission. See, *Affidavit of R.C. Johnson*.

However, here the court need not infer. The conduct of the parties described above is consistent with an *express* boundary line agreement. When R.C. Johnson divided the contiguous tract by selling the 20 acre parcel on the West side of Three Bear Road to Laura Adamson, there was not only an express oral agreement as to the location of the subject boundary line, R.C. Johnson put it in writing. The reference in the (Johnson to Adamson) Warranty Deed to the Right of Way Deed granted by Wayne Johnson to the county clearly established the subject corner at the North end to be a certain distance (50 feet) East of the center of Three Bear Road.

Affidavit of R.C. Johnson.

The boundary line agreement fixing the location of the North 1/4 corner common to Sections 26 and 27 was created in 1974 when Wayne Johnson responded to County Road Supervisor Vernon Lamphier's letter—"...find a description of the right of way along your land as previously discussed. If it meets your approval..."—by signing the enclosed Right of Way deed for recording.

The agreement was ratified by R.C. Johnson and Laura Adamson when the contiguous tract was divided on each side of the rectangles described in the Right of Way Deed—"Less 1.06 Ac Road Right of Way in Sec. 27 Recorded No. 108078". Not only are the Mareks and all subsequent owners also bound by this agreement, they can claim no more than what R.C. Johnson conveyed to Laura Adamson.

III.

CONCLUSION

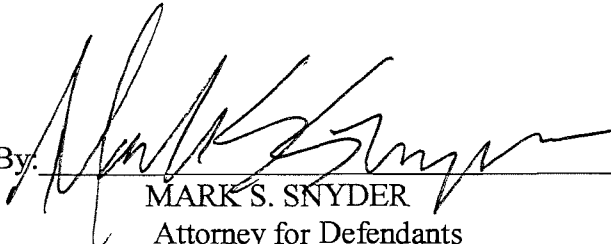
There is no need for a trial in this case. The obvious conclusion is that there was an express boundary line agreement consistent with subsequent use and acquiescence. But even if not, the elements of adverse possession have been met.

Again, we emphasize that the purpose of summary judgment proceedings is to eliminate the necessity of trial where facts are not in dispute and where existent and undisputed facts lead to a conclusion of law which is certain. *Bandelin v. Pietsch*, 98 Idaho 337, 563 P.2d 395 (1977), cert. denied, 434 U.S. 891, 98 S.Ct. 266, 54 L.Ed.2d 177 (1977); *Jacobsen v. State*, 89 Wash.2d 104, 569 P.2d 1152 (1977); see *Hackin v. Rupp*, 9 Ariz.App. 354, 452 P.2d 519 (1969). If a party resists summary judgment, it is his responsibility to place in the record before the trial court the existence of controverted material facts which require resolution by trial. A party may not rely on his pleadings nor merely assert that there are some facts which might or will support his legal theory, but rather he must establish the existence of those facts by deposition, affidavit, or otherwise. Failure to so establish the existence of controverted material facts exposes a party to the risk of a summary judgment. We hold that such is the case here.

Berg v. Fairman, 107 Idaho 441, 690 P.2d 896 (Idaho 1984)

The only evidence the Marek can present is their survey, which places the disputed corner some 65 feet East of the corner identified in the recorded Right of Way Deed. It is almost certain that a modern survey will be inconsistent with historical usage. And often two surveyors will not agree. But here, we have the rare existence of an express agreement, recorded and binding on all owners subsequent to division of the Johnson property in 1985.

DATED this 26th day of July, 2010.

By: 
MARK S. SNYDER
Attorney for Defendants

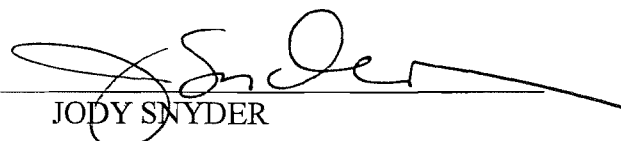
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On this 26th day of July, 2010, to:

Paul Thomas Clark
Clark & Feeney
P.O. Drawer 285
Lewiston, ID 83501

By: 
JODY SNYDER

FILED. *Jan 18 1964* 1989
R. P. M. Anderson
Clark.

PLAT
of
THE HAYS ROAD

Surveyed April 28th 1889 - by W. P. Bell C^y Surv

T38 NR 1. W B.M.

East

NOV-17

For 1/2

mark

Memorandum Of Law In Support Of Defendants' Second Motion For Summary Judgment

CVI JTD TT "A"

CARRIE BIRD
CLERK - DISTRICT COURT
CLEARWATER COUNTY
OROFINO, IDAHO

2010 JUL 26 PM 2 44

CASE NO. 2V08-392

BY CD DEPUTY

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Attorneys for Defendants

EARL A. LAWRENCE and SANDRA L. LAWRENCE

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
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vs.

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L. LAWRENCE, husband and wife, and
ROBERT C. JOHNSON, a married
man, et al.,**

Defendants.

CASE NO.: CV2008-392

**DEFENDANTS' ANSWER TO
PLAINTIFFS' SECOND AMENDED
COMPLAINT AND AMENDED
COUNTERCLAIM**

COMES NOW, the above-named defendants, EARL A. LAWRENCE and SANDRA L.

LAWRENCE, by and through their attorney of record, Mark S. Snyder and hereby answer the

**DEFENDANTS' ANSWER TO PLAINTIFFS'
SECOND AMENDED COMPLAINT AND AMENDED COUNTERCLAIM**

1

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plaintiffs' second amended complaint as follows:

1. Defendants admit the allegations contained in Paragraph 1 of Plaintiffs' Complaint.
2. Defendants are without sufficient information and knowledge to admit or deny the allegations contained in Paragraph 2 of Plaintiffs' complaint.
3. Defendants admit the allegations contained in Paragraph 3 of Plaintiffs' Complaint.
4. Defendants deny the allegations contained in Paragraph 4 of Plaintiffs' complaint.
5. Paragraph 5 of Plaintiffs' complaint requires no response.
6. Defendants deny the allegations contained in Paragraph 6 of Plaintiffs' complaint.
7. Defendants deny the allegations contained in Paragraph 7 of Plaintiffs' complaint.
8. Defendants deny the allegations contained in Paragraph 8 of Plaintiffs' complaint.
9. Defendants deny the allegations contained in Paragraph 9 of Plaintiffs' complaint.
10. Defendants deny the allegations contained in Paragraph 10 of Plaintiffs' complaint.
11. Defendants deny the allegations contained in Paragraph 11 of Plaintiffs' complaint.
12. Defendants admit the allegations contained in Paragraph 12 of Plaintiffs' complaint.
13. Defendants deny the allegations contained in Paragraph 13 of Plaintiffs' complaint.

complaint.

14. Defendants deny the allegations contained in Paragraph 14 of Plaintiffs'

complaint.

15. Defendants deny the allegations contained in Paragraph 15 of Plaintiffs'

complaint.

16. Defendants deny the allegations contained in Paragraph 16 of Plaintiffs'

complaint.

17. Defendants deny the allegations contained in Paragraph 17 of Plaintiffs'

complaint.

18. Defendants admit the allegations contained in Paragraph 18 of Plaintiffs'

complaint.

19. Defendants admit the allegations contained in Paragraph 19 of Plaintiffs'

complaint.

20. Defendants deny the allegations contained in Paragraph 20 of Plaintiffs'

complaint.

21. Defendants deny the allegations contained in Paragraph 21 of Plaintiffs'

complaint.

22. Defendants deny the allegations contained in Paragraph 22 of Plaintiffs'

complaint.

23. Defendants deny the allegations contained in Paragraph 23 of Plaintiffs'

complaint.

36. Defendants deny the allegations contained in Paragraph 36 of Plaintiffs' complaint.

37. Defendants deny the allegations contained in Paragraph 37 of Plaintiffs' complaint.

38. Defendants deny the allegations contained in Paragraph 38 of Plaintiffs' complaint.

AFFIRMATIVE DEFENSES

AS FIRST AFFIRMATIVE DEFENSE, plaintiffs' fail to state a claim or claims for which relief may be granted.

COUNTERCLAIM

QUIET TITLE

COMES NOW, the above-named defendants and counterclaim against the plaintiffs, as follows:

39. The location of the North/South centerline of Section 27, Township 38 North, Range 1 West, Boise Meridian, Clearwater County, Idaho, is in dispute. Plaintiffs' own property West of said centerline – the Defendants own property East of said centerline.

40. A boundary line fence, serving as the boundary between what is now the Plaintiffs' property in Section 27 and what is now the Defendants' property in Section 27 was constructed over fifty (50) years ago and existed and was maintained by the property owners on either side of the fence as the agreed boundary line, to which Plaintiffs and their predecessors in interest have acquiesced. Defendants and their predecessors have cultivated the property East of

said fence line up to said fence line for several decades.

41. In the Spring of 2008 Plaintiffs and/or their agents removed the old existing boundary fence at or near the center section line of said Section 27 without prior notice or permission of the Defendants or Mary Ann Pavel. At that time, Mary Ann Pavel was the fee simple owner of the property East of said fence and the Defendants had formed a contract with Ms. Pavel to purchase said property East of the fence. As of this date, the Defendants are the fee simple owners of said property.

42. The exact location of the centerline of said Section 27 has for many decades been uncertain, or in dispute.

43. The section line between Sections 26 and 27, Township 38 North, Range 1 West, Boise Meridian, Clearwater County, Idaho is also in dispute.

44. Three Bear Road runs parallel to and on or near said disputed line.

45. The defendants own and farm the North one-half of the Southwest Quarter of said Section 26. The plaintiffs own property in said Section 27, adjacent to and West of said Defendants' property.

46. The Defendants have occupied, paid taxes on, cultivated and otherwise used the property up to the Three Bear Road right-of-way for more than twenty (20) years prior to the filing of this action, continuously, adversely, openly and notoriously.

47. In November of 1974 Wayne Johnson and his son Robert Johnson owned the property on both sides of Three Bear Road—the Marek and Lawrence properties—as a contiguous tract.

48. In December of 1974, Wayne Johnson conveyed a Right of Way Deed to Clearwater County with a description that identified the North 1/4 corner common to Sections 26 and 27, Township 38N, Range 1W, B.M. Said Right of Way Deed was recorded as Instrument No. 108078, Clearwater County land records.

49. In August of 1985 Robert Johnson sold what is now the Marek property to Gayle Marek's mother, Laura Adamson and conveyed the property by Warranty Deed, less the ground described in the Right of Way Deed.

50. Said Right of Way Deed evidences a boundary line agreement between Robert Johnson and Laura Adamson, which agreement was binding upon the Mareks.

WHEREFORE, Defendants pray for judgment against the Plaintiffs as follows:

1. That the Plaintiffs' complaint be dismissed and that they take nothing for their claims;
2. That Plaintiffs be forever barred from all claims to an estate in the premises of the Defendants described above, and that the Defendants be declared the lawful owners of a fee simple interest in said premises;
3. For an order adjudging that the old, long existing fence line on or near the center section line of said Section 27 serve as the boundary between Plaintiffs' property and Defendants' property and the Defendants are entitled to the lawful, peaceable and uninterrupted possession of said property up to the old fence line as against the Plaintiffs, all successors in interest to the Plaintiffs, and all others whomsoever.

4. That the North 1/4 corner common to Sections 26 and 27, Township 38N, Range 1W, B.M., be established by measuring 50 feet East of the center of Three Bear Road at that point and the boundary line between properties of the parties and all successors be established according to said 1/4 corner.
5. Defendants' costs incurred herein.
6. For such other and further relief as the court may deem just and proper.

DATED this 26 day of July, 2010.

By: 

MARK S. SNYDER
Attorney for Defendants

CERTIFICATE OF DELIVERY

I hereby certify that I caused a true and correct copy of the foregoing to be:

- ☒ mailed, postage prepaid;
☐ hand delivered;
☐ facsimile transmitted

On this 26th day of July, 2010, to:

Paul Thomas Clark
Clark & Feeney
P.O. Drawer 285
Lewiston, ID 83501

By: 

JODY SNYDER

**DEFENDANTS' ANSWER TO PLAINTIFFS'
SECOND AMENDED COMPLAINT AND AMENDED COUNTERCLAIM**

CARRIE BIRD
CLERK - DISTRICT COURT
CLEARWATER COUNTY
CROFING, IDAHO

2010 JUL 12 AM 8 29

CASE NO. CV 2008-392

BY CP DEPUTY

PAUL THOMAS CLARK
Idaho State Bar No. 1329
CLARK and FEENEY
Attorneys for Plaintiff Mareks
The Train Station
13th and Main Streets
P. O. Drawer 285
Lewiston, Idaho 83501
Telephone: (208)743-9516

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

FRANK RONALD MAREK and GAYLE MAREK,)
husband and wife,)

Plaintiffs,)

Case No. CV 2008-00392

vs.)

SECOND AMENDED COMPLAINT

EARL A. LAWRENCE and SANDRA L.)
LAWRENCE, husband and wife, ROBERT C.)
JOHNSON, a married man, SANDI)
WORTHINGTON, a married woman, and ALL)
PERSONS UNKNOWN, CLAIMING ANY LEGAL)
OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN,)
OR INTESTATE IN THE PROPERTY SITUATE IN)
THE COUNTY OF CLEARWATER. STATE OF)
IDAHO, DESCRIBED AS FOLLOWS ADVERSE)
TO THE PLAINTIFFS' TITLE:)

Parcel 1:)

E1/2 SW1/4 OF SECTION 27, TOWNSHIP 38 NORTH,)
RANGE 1 WEST, BOISE MERIDIAN,)

EXCEPTING that portion lying North of County Road.)

EXCEPTING: the Highway Right of Way as deeded in Warranty)
Deed in Book 46 of Deeds, page 539.)

ALSO EXCEPTING: the Highway Right of Way as deeded in)
Warranty Deed in Book 46 of Deeds, page 539.)

ALSO EXCEPTING: the Highway Right of Way as deeded in)
Warranty Deed in Book 49 of Deeds, page 412.)

Parcel 2:

NW 1/4 SE1/4 OF SECTION 27, TOWNSHIP 38 NORTH,
RANGE 1 WEST, BOISE MERIDIAN

EXCEPTING all that property lying North and West of
Clearwater County Road.

Parcel 3:

NE1/4 SE1/4 of Section 27, Township 38 North, Range 1 West,
Boise Meridian, LESS Northwest of the county road.

EXCEPTING: A part of the NW1/4 SW1/4 of Section 26,
Township 38 North, Range 1 West, Boise Meridian and the part
of the NE1/4 SE1/4 of Section 27, Township 38 North, Range 1
West, Boise Meridian, Clearwater County, Idaho, and more
particularly described as:

Commencing at the 1/4 corner common to Sections 26 & 27;
thence West 20 feet to the True Point of Beginning; then West 60
feet; thence South 90°30' East, 300 feet; thence East 60 feet;
thence North 90°30' West 300 feet to the True Point of Beginning.

Also a tract of land comprising the existing county road right of
way and described as follows:

Commencing at the quarter corner common to Sections 26 and
27; thence South 299 feet to the True Point of Beginning; then
West 30 feet; thence South 1021 feet, more or less, to the South
1/16 line of NE1/4 SE1/4; thence East 60 feet; thence North 1021
feet; thence West 30 feet to the True Point of Beginning.

ALSO EXCEPTING: Right of Way Deed as recorded January 24,
1934 in Book 20 of Deeds, page 392.

Parcel 4:

Township 38 North, Range 1 West, Boise Meridian, Clearwater
County, Idaho
Section 26: SW1/4 NW1/4

Excepting: A strip of land 66 feet wide, being 33 feet on each side
of the following described center line of said highway as surveyed
and shown on the official plat of the U.S. Public Works N.R.S.
Project #178 Highway Survey on file in the office of the
Department of Public Works of the State of Idaho, and lying over
and across the Southwest quarter of the Northwest quarter of
Section 26, Township 38 North, Range 1 West, Boise Meridian.

Defendants.

SECOND AMENDED COMPLAINT -2-

COME NOW the Plaintiffs and for cause of action against the Defendants, complain and
allege as follows:

I.

INTRODUCTION

This Complaint seeks declaratory relief as well as a claim for trespass, conversion, property damage and attorney fees. The underlying subject matter of this Complaint is real property owned by the Plaintiffs and in which Defendant Sandi Worthington may claim an interest (hereinafter "Worthington") and adjacent real property owned by Defendant Earl A. Lawrence and Sandra L. Lawrence (hereafter "Lawrences") located in Clearwater County, State of Idaho. There are two boundaries disputes at issue in this case, both regarding the same parties. For ease of reference one boundary dispute will be identified as SECTION 27 DISPUTE while the other boundary dispute will be identified as THREE BEAR ROAD DISPUTE.

II.

PARTIES

1. Plaintiffs Frank Ronald Marek and Gayle Marek (a/k/a Altha Gayle Marek and a/k/a A. Gayle Marek) (hereafter "Mareks") are husband and wife.

2. Defendant Worthington is a married woman dealing with her sole and separate property who may claim an interest in some of the property which is the subject matter of this litigation and is joined as a party to ensure that her rights are adjudicated which, except as otherwise indicated herein, are claimed by Worthington to be consistent with Plaintiff's rights.

3. Defendants Earl A. Lawrence and Sandra L. Lawrence (hereafter "Lawrences") are husband and wife.

4. Defendant Robert C. Johnson is a married man dealing with his sole and separate property.

5. That Plaintiffs do not know the true names of Defendants All Persons Unknown, Claiming Any Legal or Equitable Right, Title, Estate, Lien, or Intestate in the Property Described in the Complaint Adverse to Plaintiffs' Title, and therefore sue them by that fictitious name. The names, capacities, and relationships of such Defendants will be alleged by amendment to this Complaint when the same are known.

III.

REAL PROPERTIES

SECTION 27 DISPUTE

6. Plaintiff Gayle Marek is the owner of certain real property situate in the County of Clearwater, State of Idaho more particularly described as follows:

E1/2 SW1/4 OF SECTION 27, TOWNSHIP 38 NORTH, RANGE 1 WEST, BOISE MERIDIAN,

EXCEPTING that portion lying North of County Road.

EXCEPTING: the Highway Right of Way as deeded in Warranty Deed in Book 46 of Deeds, page 539.

ALSO EXCEPTING: the Highway Right of Way as deeded in Warranty Deed in Book 46 of Deeds, page 539.

ALSO EXCEPTING: the Highway Right of Way as deeded in Warranty Deed in Book 49 of Deeds, page 412.

and the Plaintiff Gayle Marek is an owner and Defendant Worthington claims to be an owner of certain real property situate in the County of Clearwater, State of Idaho more particularly described as follows:

NW 1/4 SE1/4 OF SECTION 27, TOWNSHIP 38 NORTH, RANGE 1 WEST, BOISE MERIDIAN

EXCEPTING all that property lying North and West of Clearwater County Road.

7. Defendant Lawrences are the owners of certain real property situate in the County of Clearwater, State of Idaho more particularly described as follows:

S1/2 SE1/4 OF SECTION 27, TOWNSHIP 38 NORTH, RANGE 1 WEST, BOISE MERIDIAN

EXCEPTING right of way of State Highway No. 7 as deeded in Book 20 of Deeds, page 243, Book 39 of Deeds, page 241 and Book 48 of Deeds, page 385.

8. The real properties listed in paragraph 6 and in paragraph 7 are adjacent and share a common boundary.

THREE BEAR ROAD DISPUTE

9. Plaintiff Mareks are owners and Defendant Worthington claim to be an owner of certain real property situate in the County of Clearwater, State of Idaho more particularly described as follows:

NE1/4 SE1/4 of Section 27, Township 38 North, Range 1 West, Boise Meridian, LESS Northwest of the county road.

EXCEPTING: A part of the NW1/4 SW1/4 of Section 26, Township 38 North, Range 1 West, Boise Meridian and the part of the NE1/4 SE1/4 of Section 27, Township 38 North, Range 1 West, Boise Meridian, Clearwater County, Idaho, and more particularly described as:

Commencing at the 1/4 corner common to Sections 26 & 27; thence West 20 feet to the True Point of Beginning; then West 60 feet; thence South 90°30' East, 300 feet; thence East 60 feet; thence North 90°30' West 300 feet to the True Point of Beginning.

Also a tract of land comprising the existing county road right of way and described as follows:

Commencing at the quarter corner common to Sections 26 and 27; thence South 299 feet to the True Point of Beginning; then West 30 feet; thence South 1021 feet, more or less, to the

South 1/16 line of NE1/4 SE1/4; thence East 60 feet; thence North 1021 feet; thence West 30 feet to the True Point of Beginning.

ALSO EXCEPTING: Right of Way Deed as recorded January 24, 1934 in Book 20 of Deeds, page 392.

and the Plaintiff Gayle Marek is the owner of certain real property situate in the County of Clearwater, State of Idaho more particularly described as follows:

Township 38 North, Range 1 West, Boise Meridian, Clearwater County, Idaho
Section 26: SW1/4 NW1/4

Excepting: A strip of land 66 feet wide, being 33 feet on each side of the following described center line of said highway as surveyed and shown on the official plat of the U.S. Public Works N.R.S. Project #178 Highway Survey on file in the office of the Department of Public Works of the State of Idaho, and lying over and across the Southwest quarter of the Northwest quarter of Section 26, Township 38 North, Range 1 West, Boise Meridian.

10. Defendant Lawrences are the owners of certain real property situate in the County of Clearwater, State of Idaho more particularly described as follows:

Township 38 North, Range 1 West, Boise Meridian, Clearwater County, Idaho
Section 26: NW1/4 SW1/4

Excepting: A part of the NW1/4 SW1/4 of Section 26, Township 38 North, Range 1 West, Boise Meridian, and part of the NE1/4 SE1/4 of Section 27, Township 38 North, Range 1 West, Boise Meridian, Clearwater County, Idaho and more particularly described as follows:

Commencing at the quarter corner common to Sections 26 and 27; thence West 20 feet to the True Point of Beginning; thence West 60 feet; thence South 90°30' East 30 feet; thence East 60 feet; thence North 90°30' West 300 feet to the True Point of Beginning.

Also Excepting: A tract of land compromising the existing county road right of way and described as follows:

Commencing at the quarter corner common to Sections 26 and 27; thence South 299 feet to the True Point of Beginning; thence West 30 feet; thence South 1021 feet, more or less to the South 1/16 line of NE1/4 SE1/4; thence East 60 feet; thence North 1021 feet; thence West 30 feet to the True Point of Beginning.

11. The real properties listed in paragraph 9 and in paragraph 10 are adjacent and share a common boundary.

IV.

DECLARATORY JUDGEMENT FOR SECTION 27 DISPUTE

12. The parties' Section 27 properties are adjacent to each other and share a common boundary. The location of this boundary is in dispute.

13. Defendant Lawrences purchased their Section 27 property from Mary Ann Pavel. Prior to Defendant Lawrences' purchase of their Section 27 property, Plaintiffs had the property line surveyed. After the survey, with the consent of Ms. Pavel, the Plaintiffs erected a fence along the surveyed line.

14. Defendant Lawrences have disputed the survey line as the boundary line between the parties property, and have refused to treat the survey line as the boundary. Further, Defendant Lawrences have threatened to tear down the fence that marks the survey line of the adjoining properties.

15. All of the above named Defendants, known and unknown, claim an interest in the property adverse to Plaintiffs' interest in said real property. Said Defendants' claims are without any right whatever and Defendants have no right, estate, title, lien or interest in or to Plaintiffs' interest to said property, or any part thereof.

16. The above described claims of the Defendants constitute a cloud on Plaintiffs' title and prevent Plaintiffs from the complete enjoyment and use of said property

17. The Court should declare that the survey line is the boundary line of the parties Section 27 property and declare Plaintiffs as the owner of the premises in question to the exclusion

of the Defendants. Further, the Court should issue a permanent injunction enjoining Defendants Lawrence from interfering with Plaintiffs use of the aforementioned property and restraining them from removing the fence and any survey markers.

V.

DECLARATORY JUDGEMENT FOR THREE BEAR ROAD DISPUTE

18. The parties' Three Bear Road Property share a common boundary. The location of this boundary is in dispute.

19. A survey marker appears to indicate that the boundary line on Plaintiffs' Three Bear Road property lies east of the Three Bear Road.

20. Defendant Lawrences use their Three Bear Road Property as farm ground. In the last few years they have ignored the survey marker and farmed the real property up to the county road, thereby farming a portion of Plaintiffs' property without permission. Defendant Earl Lawrence has attempted to destroy the survey marker to cloud the boundary of the parties Three Bear Road property.

21. Plaintiffs have attempted to have the boundary line dividing the parties property surveyed. Defendant Lawrences have threatened to pull up and destroy any survey stakes the Plaintiffs pay to have put in.

22. All of the above named Defendants, known and unknown, claim an interest in the property adverse to Plaintiff's interest in said real property. Defendants' claims are without any right whatever and Defendants have no right, estate, title, lien or interest in or to Plaintiffs' interest in said property, or any part thereof.

23. The above described claims of the Defendants constitute a cloud on Plaintiffs' title and prevent Plaintiffs from the complete enjoyment and use of said property

24. The Court should declare that the survey marker is the boundary line of the parties Three Bear Road property and declare Plaintiffs as the owner of the premises in question to the exclusion of the Defendants. Further, the Court should issue a permanent injunction enjoining Defendants Lawrence from interfering with Plaintiffs use of the aforementioned property and restraining them from removing the survey marker and continuing to farm on Plaintiffs' property.

25. In the alternative, if the Court declares that the Defendant's are in adverse possession of a portion of the Plaintiffs' Three Bear Road property, then the Court should grant the Plaintiffs' an easement by necessity across the adversely possessed property so they can access their Three Bear Road property.

VI.

TRESPASS

26. Plaintiffs reallege all foregoing allegations.

27. Defendant Lawrences' and their agents, and employees, knowingly entered onto Plaintiffs' land, and without legal right and without the Plaintiffs' knowledge or consent, willfully and intentionally seeded and cultivated on Plaintiffs' land and removed and damaged Plaintiffs's fence.

28. By reason of the above acts, Plaintiffs sustained both general and special damages.

VII.

CONVERSION

29. Plaintiffs reallege all foregoing allegations.

30. Defendant Lawrences have wrongfully entered on Plaintiffs' premises, without authority, and unlawfully removed, carried away and converted to their own use a Powder River fence panel and no trespass sign on Plaintiffs' property.

31. The Powder River Fence panel and no trespass sign unlawfully removed by Defendant Lawrences had a value which will be proven at trial.

32. By reason of the above acts, Plaintiffs sustained damages in an amount to be proven at trial.

VIII.

DAMAGE TO PERSONAL PROPERTY

33. Plaintiffs reallege all foregoing allegations.

34. Defendant Lawrences have wrongfully entered on Plaintiffs' premises, without authority, and unlawfully removed, damaged, and destroyed fence located on Plaintiffs' property.

35. The fence unlawfully removed, damaged and destroyed by Defendant Lawrences had a value which will be proven at trial.

36. Defendant Lawrences were ordered by this Court to replace portions of a fence pursuant to a *Preliminary Injunction* entered by the Court in this matter on December 8, 2008, nunc pro tunc to November 24, 2008. Specifically that Defendant Lawrences were required by the *Preliminary Injunction* to re-erect the fence that runs north/south on the west side of the Pavel property at the location where it existed in the year 2007. Instead said Defendants have re-erected said fence west of that location further encroaching on the Plaintiffs' property. As a result, Plaintiffs were required to take down the fence and re-erect the fence at the location where it existed in the year 2007 pursuant to the *Preliminary Injunction*.

37. By reason of the above acts, Plaintiffs sustained damages in an amount to be proven
at trial.

VIII.

ATTORNEY FEES

38. As a further and direct consequence of Defendants' actions, the Plaintiffs have been required to retain Paul Thomas Clark of the law firm of CLARK and FEENEY, to prosecute this action. Plaintiffs are entitled to recover their costs and fees in this matter pursuant to Idaho Code §12-121.

IX.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for relief and for judgment against the Defendants as follows:

1. For an order restraining Defendants and their agents, servants, employees, guests, invitees and others acting under their direction and authority during the pendency of this action, and thereafter permanently, from entering Plaintiffs' premises and from interfering in any way with Plaintiffs' possession, use and enjoyment of the property;

2. For judgment against the Defendants on all causes of action alleged herein in an amount to be proven at trial, which amount is expected to well exceed \$10,000.00;

3. That the Court adjudge and decree that Plaintiffs are the owners of the real property and that Plaintiffs are in possession and entitled to possession of the real property, and retain jurisdiction to enforce the decree.

4. In the alternative for an order granting the Plaintiffs an easement by necessity over any adversely possessed property, or other property owned by the Defendants in order for the Plaintiffs to continue to have access to their Three Bear Road property.

5. For an award of reasonable attorney fees and costs necessarily incurred in this action.

6. For such other and further relief as the Court deems reasonable and just.

DATED This 9 day of July, 2010.

CLARK AND FEENEY

By: [Signature]
Paul Thomas Clark
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9 day of July, 2010, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Mark S. Snyder PO Box 626 Kamiah, ID 83536	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Telecopy
--	--

By: [Signature]
Attorney for Plaintiffs

CAROLINE DILL
CLERK-DISTRICT COURT
CLEARWATER COUNTY
BOISE, IDAHO

2009 JUN -9 A 11:17

CASE NO. 2008-392

BY SKS

PAUL THOMAS CLARK
Idaho State Bar No. 1329
CLARK and FEENEY
Attorneys for Plaintiff Mareks
The Train Station
13th and Main Streets
P. O. Drawer 285
Lewiston, Idaho 83501
Telephone: (208)743-9516

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

FRANK RONALD MAREK and GAYLE MAREK,)
husband and wife,)

Plaintiffs,)

vs.)

Case No. CV 2008-00392

AMENDED COMPLAINT

EARL A. LAWRENCE and SANDRA L.)
LAWRENCE, husband and wife, ROBERT C.)
JOHNSON, a married man, SANDI)
WORTHINGTON, a married woman, and ALL)
PERSONS UNKNOWN, CLAIMING ANY LEGAL)
OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN,)
OR INTESTATE IN THE PROPERTY SITUATE IN)
THE COUNTY OF CLEARWATER. STATE OF)
IDAHO, DESCRIBED AS FOLLOWS ADVERSE)
TO THE PLAINTIFFS' TITLE:)

Parcel 1:)

E1/2 SW1/4 OF SECTION 27, TOWNSHIP 38 NORTH,)
RANGE 1 WEST, BOISE MERIDIAN,)

EXCEPTING that portion lying North of County Road.)

EXCEPTING: the Highway Right of Way as deeded in Warranty)
Deed in Book 46 of Deeds, page 539.)

ALSO EXCEPTING: the Highway Right of Way as deeded in)
Warranty Deed in Book 46 of Deeds, page 539.)

ALSO EXCEPTING: the Highway Right of Way as deeded in)
Warranty Deed in Book 49 of Deeds, page 412.)

Parcel 2:

NW 1/4 SE1/4 OF SECTION 27, TOWNSHIP 38 NORTH,
RANGE 1 WEST, BOISE MERIDIAN

EXCEPTING all that property lying North and West of
Clearwater County Road.

Parcel 3:

NE1/4 SE1/4 of Section 27, Township 38 North, Range 1 West,
Boise Meridian, LESS Northwest of the county road.

EXCEPTING: A part of the NW1/4 SW1/4 of Section 26,
Township 38 North, Range 1 West, Boise Meridian and the part
of the NE1/4 SE1/4 of Section 27, Township 38 North, Range 1
West, Boise Meridian, Clearwater County, Idaho, and more
particularly described as:

Commencing at the 1/4 corner common to Sections 26 & 27;
thence West 20 feet to the True Point of Beginning; then West 60
feet; thence South 90°30' East, 300 feet; thence East 60 feet;
thence North 90°30' West 300 feet to the True Point of Beginning.

Also a tract of land comprising the existing county road right of
way and described as follows:

Commencing at the quarter corner common to Sections 26 and
27; thence South 299 feet to the True Point of Beginning; then
West 30 feet; thence South 1021 feet, more or less, to the South
1/16 line of NE1/4 SE1/4; thence East 60 feet; thence North 1021
feet; thence West 30 feet to the True Point of Beginning.

ALSO EXCEPTING: Right of Way Deed as recorded January 24,
1934 in Book 20 of Deeds, page 392.

Parcel 4:

Township 38 North, Range 1 West, Boise Meridian, Clearwater
County, Idaho
Section 26: SW1/4 NW1/4

Excepting: A strip of land 66 feet wide, being 33 feet on each side
of the following described center line of said highway as surveyed
and shown on the official plat of the U.S. Public Works N.R.S.
Project #178 Highway Survey on file in the office of the
Department of Public Works of the State of Idaho, and lying over
and across the Southwest quarter of the Northwest quarter of
Section 26, Township 38 North, Range 1 West, Boise Meridian.

Defendants.

* * * * *

COMPLAINT -2-

COME NOW the Plaintiffs and for cause of action against the Defendants, complain and
allege as follows:

I.

INTRODUCTION

This Complaint seeks declaratory relief as well as a claim for trespass, conversion, property damage and attorney fees. The underlying subject matter of this Complaint is real property owned by the Plaintiffs and in which Defendant Sandi Worthington may claim an interest (hereinafter "Worthington") and adjacent real property owned by Defendant Earl A. Lawrence and Sandra L. Lawrence (hereafter "Lawrences") located in Clearwater County, State of Idaho. There are two boundaries disputes at issue in this case, both regarding the same parties. For ease of reference one boundary dispute will be identified as SECTION 27 DISPUTE while the other boundary dispute will be identified as THREE BEAR ROAD DISPUTE.

II.

PARTIES

1. Plaintiffs Frank Ronald Marek and Gayle Marek (a/k/a Altha Gayle Marek and a/k/a A. Gayle Marek) (hereafter "Mareks") are husband and wife.

2. Defendant Worthington is a married woman dealing with her sole and separate property who may claim an interest in some of the property which is the subject matter of this litigation and is joined as a party to ensure that her rights are adjudicated which, except as otherwise indicated herein, are claimed by Worthington to be consistent with Plaintiff's rights.

3. Defendants Earl A. Lawrence and Sandra L. Lawrence (hereafter "Lawrences") are husband and wife.

COMPLAINT -3-

4. Defendant Robert C. Johnson is a married man dealing with his sole and separate property.

5. That Plaintiffs do not know the true names of Defendants All Persons Unknown, Claiming Any Legal or Equitable Right, Title, Estate, Lien, or Intestate in the Property Described in the Complaint Adverse to Plaintiffs' Title, and therefore sue them by that fictitious name. The names, capacities, and relationships of such Defendants will be alleged by amendment to this Complaint when the same are known.

III.

REAL PROPERTIES

SECTION 27 DISPUTE

6. Plaintiff Gayle Marek is the owner of certain real property situate in the County of Clearwater, State of Idaho more particularly described as follows:

E1/2 SW1/4 OF SECTION 27, TOWNSHIP 38 NORTH, RANGE 1 WEST, BOISE MERIDIAN,

EXCEPTING that portion lying North of County Road.

EXCEPTING: the Highway Right of Way as deeded in Warranty Deed in Book 46 of Deeds, page 539.

ALSO EXCEPTING: the Highway Right of Way as deeded in Warranty Deed in Book 46 of Deeds, page 539.

ALSO EXCEPTING: the Highway Right of Way as deeded in Warranty Deed in Book 49 of Deeds, page 412.

and the Plaintiff Gayle Marek is an owner and Defendant Worthington claims to be an owner of certain real property situate in the County of Clearwater, State of Idaho more particularly described as follows:

COMPLAINT -4-

NW 1/4 SE1/4 OF SECTION 27, TOWNSHIP 38 NORTH, RANGE 1 WEST, BOISE MERIDIAN

EXCEPTING all that property lying North and West of Clearwater County Road.

7. Defendant Lawrences are the owners of certain real property situate in the County of Clearwater, State of Idaho more particularly described as follows:

S1/2 SE1/4 OF SECTION 27, TOWNSHIP 38 NORTH, RANGE 1 WEST, BOISE MERIDIAN

EXCEPTING right of way of State Highway No. 7 as deeded in Book 20 of Deeds, page 243, Book 39 of Deeds, page 241 and Book 48 of Deeds, page 385.

8. The real properties listed in paragraph 6 and in paragraph 7 are adjacent and share a common boundary.

THREE BEAR ROAD DISPUTE

9. Plaintiff Mareks are owners and Defendant Worthington claim to be an owner of certain real property situate in the County of Clearwater, State of Idaho more particularly described as follows:

NE1/4 SE1/4 of Section 27, Township 38 North, Range 1 West, Boise Meridian, LESS Northwest of the county road.

EXCEPTING: A part of the NW1/4 SW1/4 of Section 26, Township 38 North, Range 1 West, Boise Meridian and the part of the NE1/4 SE1/4 of Section 27, Township 38 North, Range 1 West, Boise Meridian, Clearwater County, Idaho, and more particularly described as:

Commencing at the 1/4 corner common to Sections 26 & 27; thence West 20 feet to the True Point of Beginning; then West 60 feet; thence South 90°30' East, 300 feet; thence East 60 feet; thence North 90°30' West 300 feet to the True Point of Beginning.

Also a tract of land comprising the existing county road right of way and described as follows:

Commencing at the quarter corner common to Sections 26 and 27; thence South 299 feet to the True Point of Beginning; then West 30 feet; thence South 1021 feet, more or less, to the South 1/16 line of NE1/4 SE1/4; thence East 60 feet; thence North 1021 feet; thence West 30 feet to the True Point of Beginning.

ALSO EXCEPTING: Right of Way Deed as recorded January 24, 1934 in Book 20 of Deeds, page 392.

and the Plaintiff Gayle Marek is the owner of certain real property situate in the County of Clearwater, State of Idaho more particularly described as follows:

Township 38 North, Range 1 West, Boise Meridian, Clearwater County, Idaho
Section 26: SW1/4 NW1/4

Excepting: A strip of land 66 feet wide, being 33 feet on each side of the following described center line of said highway as surveyed and shown on the official plat of the U.S. Public Works N.R.S. Project #178 Highway Survey on file in the office of the Department of Public Works of the State of Idaho, and lying over and across the Southwest quarter of the Northwest quarter of Section 26, Township 38 North, Range 1 West, Boise Meridian.

10. Defendant Lawrences are the owners of certain real property situate in the County of Clearwater, State of Idaho more particularly described as follows:

Township 38 North, Range 1 West, Boise Meridian, Clearwater County, Idaho
Section 26: NW1/4 SW1/4

Excepting: A part of the NW1/4 SW1/4 of Section 26, Township 38 North, Range 1 West, Boise Meridian, and part of the NE1/4 SE1/4 of Section 27, Township 38 North, Range 1 West, Boise Meridian, Clearwater County, Idaho and more particularly described as follows:

Commencing at the quarter corner common to Sections 26 and 27; thence West 20 feet to the True Point of Beginning; thence West 60 feet; thence South 90°30' East 30 feet; thence East 60 feet; thence North 90°30' West 300 feet to the True Point of Beginning.

Also Excepting: A tract of land compromising the existing county road right of way and described as follows:

Commencing at the quarter corner common to Sections 26 and 27; thence South 299 feet to the True Point of Beginning; thence West 30 feet; thence South 1021 feet, more or less to the South 1/16 line of NE1/4 SE1/4; thence East 60 feet; thence North 1021 feet; thence West 30 feet to the True Point of Beginning.

11. The real properties listed in paragraph 9 and in paragraph 10 are adjacent and share a common boundary.

IV.

DECLARATORY JUDGEMENT FOR SECTION 27 DISPUTE

12. The parties' Section 27 properties are adjacent to each other and share a common boundary. The location of this boundary is in dispute.

13. Defendant Lawrences purchased their Section 27 property from Mary Ann Pavel. Prior to Defendant Lawrences' purchase of their Section 27 property, Plaintiffs had the property line surveyed. After the survey, with the consent of Ms. Pavel, the Plaintiffs erected a fence along the surveyed line.

14. Defendant Lawrences have disputed the survey line as the boundary line between the parties property, and have refused to treat the survey line as the boundary. Further, Defendant Lawrences have threatened to tear down the fence that marks the survey line of the adjoining properties.

15. All of the above named Defendants, known and unknown, claim an interest in the property adverse to Plaintiffs' interest in said real property. Said Defendants' claims are without any right whatever and Defendants have no right, estate, title, lien or interest in or to Plaintiffs' interest to said property, or any part thereof.

16. The above described claims of the Defendants constitute a cloud on Plaintiffs' title and prevent Plaintiffs from the complete enjoyment and use of said property

17. The Court should declare that the survey line is the boundary line of the parties Section 27 property and declare Plaintiffs as the owner of the premises in question to the exclusion

COMPLAINT -7-

of the Defendants. Further, the Court should issue a permanent injunction enjoining Defendants Lawrence from interfering with Plaintiffs use of the aforementioned property and restraining them from removing the fence and any survey markers.

V.

DECLARATORY JUDGEMENT FOR THREE BEAR ROAD DISPUTE

18. The parties' Three Bear Road Property share a common boundary. The location of this boundary is in dispute.

19. A survey marker appears to indicate that the boundary line on Plaintiffs' Three Bear Road property lies east of the Three Bear Road.

20. Defendant Lawrences use their Three Bear Road Property as farm ground. In the last few years they have ignored the survey marker and farmed the real property up to the county road, thereby farming a portion of Plaintiffs' property without permission. Defendant Earl Lawrence has attempted to destroy the survey marker to cloud the boundary of the parties Three Bear Road property.

21. Plaintiffs have attempted to have the boundary line dividing the parties property surveyed. Defendant Lawrences have threatened to pull up and destroy any survey stakes the Plaintiffs pay to have put in.

22. All of the above named Defendants, known and unknown, claim an interest in the property adverse to Plaintiff's interest in said real property. Defendants' claims are without any right whatever and Defendants have no right, estate, title, lien or interest in or to Plaintiffs' interest in said property, or any part thereof.

23. The above described claims of the Defendants constitute a cloud on Plaintiffs' title
and prevent Plaintiffs from the complete enjoyment and use of said property

24. The Court should declare that the survey marker is the boundary line of the parties
Three Bear Road property and declare Plaintiffs as the owner of the premises in question to the
exclusion of the Defendants. Further, the Court should issue a permanent injunction enjoining
Defendants Lawrence from interfering with Plaintiffs use of the aforementioned property and
restraining them from removing the survey marker and continuing to farm on Plaintiffs' property.

VI.

TRESPASS

25. Plaintiffs reallege all foregoing allegations.

26. Defendant Lawrences' and their agents, and employees, knowingly entered onto
Plaintiffs' land, and without legal right and without the Plaintiffs' knowledge or consent, willfully
and intentionally seeded and cultivated on Plaintiffs' land and removed and damaged Plaintiffs's
fence.

27. By reason of the above acts, Plaintiffs sustained both general and special damages.

VII.

CONVERSION

28. Plaintiffs reallege all foregoing allegations.

29. Defendant Lawrences have wrongfully entered on Plaintiffs' premises, without
authority, and unlawfully removed, carried away and converted to their own use a Powder River
fence panel and no trespass sign on Plaintiffs' property.

30. The Powder River Fence panel and no trespass sign unlawfully removed by Defendant Lawrences had a value which will be proven at trial.

31. By reason of the above acts, Plaintiffs sustained damages in an amount to be proven at trial.

VIII.

DAMAGE TO PERSONAL PROPERTY

32. Plaintiffs reallege all foregoing allegations.

33. Defendant Lawrences have wrongfully entered on Plaintiffs' premises, without authority, and unlawfully removed, damaged, and destroyed fence located on Plaintiffs' property.

34. The fence unlawfully removed, damaged and destroyed by Defendant Lawrences had a value which will be proven at trial.

35. Defendant Lawrences were ordered by this Court to replace portions of a fence pursuant to a *Preliminary Injunction* entered by the Court in this matter on December 8, 2008, nunc pro tunc to November 24, 2008. Specifically that Defendant Lawrences were required by the *Preliminary Injunction* to re-erect the fence that runs north/south on the west side of the Pavel property at the location where it existed in the year 2007. Instead said Defendants have re-erected said fence west of that location further encroaching on the Plaintiffs' property. As a result, Plaintiffs were required to take down the fence and re-erect the fence at the location where it existed in the year 2007 pursuant to the *Preliminary Injunction*.

36. By reason of the above acts, Plaintiffs sustained damages in an amount to be proven at trial.

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DATED This 8th day of June, 2009.

CLARK AND FEENEY

By: [Signature]
Paul Thomas Clark
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of June, 2009, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Mark S. Snyder PO Box 626 Kamiah, ID 83536	<input checked="checked" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Telecopy
--	---

By: [Signature]
Attorney for Plaintiffs

CLERK-DISTRICT COURT
CLEARWATER COUNTY
CROFT, IDAHO

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

FRANK RONALD MAREK and GAYLE
MAREK, husband and wife, and SANDI
WORTHINGTON, a married woman,

Plaintiffs,

v.

EARL A. LAWRENCE and SANDRA L.
LAWRENCE, husband and wife, and
ROBERT C. JOHNSON, a married man, et al.

Defendants.

CASE NO.

BY SKS

DEPT

Case No.: CV 2008-392

MEMORANDUM DECISION AND ORDER

This case comes before me on the Lawrences' motion for summary judgment with respect to the Mareks' request for declaratory judgment with respect to the boundaries between the parties' properties and claims of trespass, and conversion. I decline to decide the claims for trespass or conversion at this time, and render judgment only with respect to the Three Bear Road Dispute.

I. FACTS

The Mareks and the Lawrences own adjoining parcels of land in northern Clearwater County, in Sections 26 and 27, respectively, Township 38 North, Range 1 West.¹ Three Bear Road, a county road, lies along the section line from its junction with Cavendish Highway to a point approximately 2,400 feet to the north, where Three Bear Road deviates slightly westerly from the section line.

¹ There is an additional parcel, referred to by the parties as the Pavel property, that has a disputed boundary as well. The parties tentatively agree that the Pavel dispute was resolved by a previous order fixing the location of a fence.

The Mareks' property is described as the northern half of the southeast quarter of Section 26, less a small piece of property not implicated in this dispute.² The Lawrences' property encompasses the entirety of the northern half of the southwest quarter of Section 27, with no reservations. The deviation of Three Bear Road begins approximately 230 feet south of the shared northern boundary of the two properties.³ At the point at which the road reaches the northern boundary, its centerline lies approximately 40 feet west of the section line.

Three Bear Road was long assumed to have been located on the section line. The Lawrences and their predecessors in interest, whose land lies to the east of Three Bear Road, have cultivated the land to the eastern edge of the road continuously for at least twenty years.

II. CONTENTIONS

The Lawrences contend that by virtue of continuously cultivating the disputed area, they have established adverse possession of the property by open, notorious, hostile use. They claim that although they have not paid taxes on the property, as required by the adverse possession statute, Idaho Code section 5-210, they satisfy the "lot number" exception to the statute

The Mareks argue that the elements of adverse possession, specifically the payment of taxes on the property, have not been established. Further, the Mareks contend that the Lawrences have offered insufficient facts to support the claim of adverse possession. Finally, at oral argument, the Mareks argue that the affidavits of Ben Johnson

² The property description does not include a portion to the northwest of Cedar Creek Road in the northwest corner of the property.

³ While there may be some deviation further to the south, the first substantial deviation – where the section line falls outside the roadbed – appears to be near the intersection of Cedar Creek Road and Three Bear Road.

and Mellisa Stewart filed on April 14 and April 15, respectively, may not properly be considered on motion for summary judgment.

III. DISCUSSION

A. Legal Standard.

When deciding a motion for summary judgment all disputed facts must be construed liberally in favor of the non-moving party and all reasonable inferences must be drawn in favor of the non-moving party. *Infanger v. City of Salmon*, 137 Idaho 45, 47 (2002). Summary judgment is appropriate if the pleadings, depositions, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Id.*; Idaho R. Civ. P. 56. The burden of proving the absence of a material fact rests at all times upon the moving party. *Harris v. State Dep't of Health*, 123 Idaho 295, 298 (1992). If the evidence reveals no disputed issues of material fact, then only a question of law remains, over which I exercise free review. *Infanger v. City of Salmon*, 137 Idaho at 47.

B. The affidavits of Ben Johnson and Mellisa Stewart submitted by the Lawrences, and the affidavit of Mellisa Stewart submitted by the Mareks are permitted, consistent with my discretionary authority under Rule 56(e).

Idaho Civil Rule 56(c) requires, in relevant part, that “the motion, affidavits and supporting brief shall be served at least twenty-eight (28) days before the time fixed for the hearing.” After service, the nonmoving party must reply not later than fourteen days prior to the hearing, to which the moving party may reply not later than seven days prior to the hearing. Idaho R. Civ. Pro. 56(c). I may, in my discretion, permit the filing of supplemental affidavits. Idaho R. Civ. Pro. 56(e).

The Lawrences moved for summary judgment in this matter on January 20, 2009. The motion was set for hearing April 20, 2009. The parties stipulated to continue the hearing, as well as a hearing scheduled for March 24, 2009, to April 21, 2009.

The Mareks filed their memorandum in opposition to the motion on April 7, 2009, without the affidavit of Mellisa Stewart, who was unavailable.⁴ They moved to extend the time to respond to the motion the same day, for the purpose of including Ms. Stewart's affidavit in their response. The motion to extend time was noticed for hearing April 21, 2009. Ms. Stewart signed her affidavit on April 9, 2009, and it was filed the same day.

The Lawrences subsequently filed affidavits from Ms. Stewart (April 14) and Mr. Johnson (April 15). At the April 21 hearing, the motion to extend went unheard.

One of the chief purposes of the pleading requirements of the rules of civil procedure is to promote fairness in litigation by bringing a much deserved end to trial by ambush. I do not think that either party is substantially prejudiced by the consideration of any of the three affidavits which were, by rule, untimely. I conclude both that the consideration of the various affidavits identified above is a matter within my discretion and that all three affidavits are permitted.

C. The Lawrences are not entitled to summary judgment on their adverse possession claim.

To establish a claim of adverse possession, a party must show either that the property is protected by a substantial enclosure, or has been usually cultivated or improved. I.C. § 5-210. Further, the claimant must show that the land has been occupied and claimed for a continuous period of twenty years and that the claimant, their predecessors and grantors, have paid all the taxes levied on the land. *Id.*

⁴ Ms. Stewart's affidavits relate to the means by which taxes are assessed.

Idaho recognizes three exceptions to the tax payment requirement. The payment of taxes is not required as proof of adverse possession where (1) the property is subject to the "lot number" exception; (2) no taxes have been levied on the property; or (3) a boundary by agreement is at issue. *Trappett v. Davis*, 102 Idaho 527, 531-32 (1981). The second of three exceptions has no application here. Boundary by agreement, while argued with respect to the Pavel property, has not been argued with respect to the Three Bear Road dispute.

The Lawrences rely here on the "lot number" exception, which provides that:

where one landowner can establish continuous open, notorious and hostile possession of an adjoining strip of his neighbor's land, and taxes are assessed by lot number or by government survey designation, rather than by metes and bounds description, payment of taxes on the lot within which the disputed tract is enclosed satisfies the tax payment requirement of the ... statute.

Scott v. Gubler, 95 Idaho 441, 443-44 (1973). The Lawrences contend that the exception is applicable to them because the legal description contained in their deed is a "generic government survey." *Memorandum of Law in Opp. To Pl. Motion for Prelim. Injunction and in Support of Def. Motion for Sum. Judg.* at 4. The properties in question are described by general government survey, being specifically partitioned by the section line between Sections 26 and 27.

There is no dispute that the parties paid the taxes for their respective lands. While the Lawrences and their predecessors in interest cultivated the disputed area between the section line and Three Bear Road, the Mareks and their predecessors paid the taxes. The

essential disagreement here is not whether the lot number exception is applicable, but rather whether the Lawrences have offered sufficient proof that their possession was open, notorious, and hostile to the interests of the Mareks and their predecessors.

The existence of a physical demarcation between the properties – Three Bear Road – suggests that either the parties presumed the road followed the section line as it does throughout most of its length, or that the predecessors of the Mareks and Lawrences were aware of the deviation and reached a mutual understanding with respect to the disputed property. In either event, a claim of adverse possession will not withstand scrutiny. In the former case, the possession is not open, notorious, and hostile. In the latter case, a boundary by agreement rather than adverse possession is implicated.

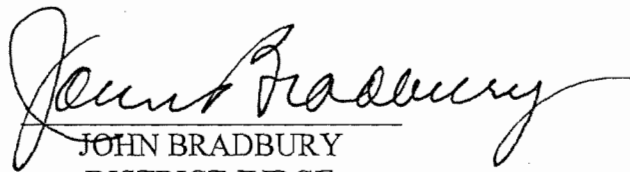
IV. CONCLUSION

Where judicial intervention in land disputes is necessary, I believe it is incumbent upon me to tread warily. I conclude that the evidence offered by the Lawrences with respect to the nature of the possession is inadequate to support summary judgment.

V. ORDER

The Lawrences' motion for summary judgment is DENIED.

IT IS SO ORDERED, this the 27 day of May, 2009


JOHN BRADBURY
DISTRICT JUDGE

CERTIFICATE OF DELIVERY

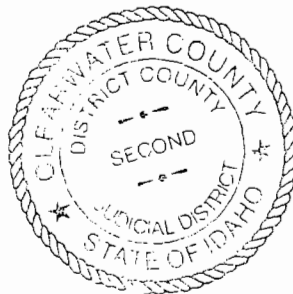
I, the undersigned, a Deputy Clerk of the above entitled Court, do hereby certify that a copy of this document was mailed or delivered on the TH27 day of May, 2009 to the following persons:

Mark S. Snyder
PO Box 626
Kamiah, ID 83536

[] U.S. Mail
[] Overnight Mail
[X] Fax 935-2323
[] Hand Delivery 7911

Paul Thomas Clark
Clark & Feeney
PO Drawer 285
Lewiston, ID 83501

[] U.S. Mail
[] Overnight Mail
[X] Fax 746-9160
[] Hand Delivery



CARRIE BIRD, CLERK

By: See K. Summerton
Deputy Clerk

160

Second Judicial District Court - Clearwater County

User: CHRISTY

Exhibit Summary

Case: CV-2008-0000392

Frank Ronald Marek, etal. vs. Earl A Lawrence, etal.

Sorted by Exhibit Number

FILED CV08-392 AM 5:10 PM
 NOV 24 2008
 Clerk Dist. Court
 Clearwater County, Idaho
 Destroy Notification Date
 Destroy or Return Date

Number	Description	Result	Storage Location Property Item Number	Destroy Notification Date	Destroy or Return Date
1	Plaintiff's Exhibit 1 - Map	Admitted	Court File		
		Assigned to:	Clark, Paul Thomas		
2	Defendant's Exhibit 1 - Ariel Map	Admitted	Court File		
		Assigned to:	Snyder, Mark S.		
3	Defendant's Exhibit 2 - Pictures of Property	Admitted	Court File		
		Assigned to:	Snyder, Mark S.		

CLERK-DISTRICT COURT
CLEARWATER COUNTY
OROSEME, IDAHO

2008 NOV -3 2:31

CASE NO. CV 08-392

BY SLK DEPT

PAUL THOMAS CLARK
Idaho State Bar No. 1329
CLARK and FEENEY
Attorneys for Plaintiff
The Train Station, Suite 201
13th and Main Streets
P. O. Drawer 285
Lewiston, Idaho 83501
Telephone: (208)743-9516

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

FRANK RONALD MAREK and GAYLE MAREK,)
husband and wife, and SANDI WORTHINGTON, a)
married woman,)

Plaintiffs,)

vs.)

EARL A. LAWRENCE and SANDRA L.)
LAWRENCE, husband and wife, and ROBERT)
C. JOHNSON, a married man, and ALL)
PERSONS UNKNOWN, CLAIMING ANY LEGAL)
OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN,)
OR INTESTATE IN THE PROPERTY SITUATE IN)
THE COUNTY OF CLEARWATER. STATE OF)
IDAHO, DESCRIBED AS FOLLOWS ADVERSE)
TO THE PLAINTIFFS' TITLE:)

Parcel 1:)

E1/2 SW1/4 OF SECTION 27, TOWNSHIP 38 NORTH,)
RANGE 1 WEST, BOISE MERIDIAN,)

EXCEPTING that portion lying North of County Road.)

EXCEPTING: the Highway Right of Way as deeded in Warranty)
Deed in Book 46 of Deeds, page 539.)

ALSO EXCEPTING: the Highway Right of Way as deeded in)
Warranty Deed in Book 46 of Deeds, page 539.)

ALSO EXCEPTING: the Highway Right of Way as deeded in)
Warranty Deed in Book 49 of Deeds, page 412.)

Case No. CV 2008-00392

REPLY TO COUNTERCLAIM

Parcel 2:

NW 1/4 SE1/4 OF SECTION 27, TOWNSHIP 38 NORTH,
RANGE 1 WEST, BOISE MERIDIAN

EXCEPTING all that property lying North and West of
Clearwater County Road.

Parcel 3:

NE1/4 SE1/4 of Section 27, Township 38 North, Range 1 West,
Boise Meridian, LESS Northwest of the county road.

EXCEPTING: A part of the NW1/4 SW1/4 of Section 26,
Township 38 North, Range 1 West, Boise Meridian and the part
of the NE1/4 SE1/4 of Section 27, Township 38 North, Range 1
West, Boise Meridian, Clearwater County, Idaho, and more
particularly described as:

Commencing at the 1/4 corner common to Sections 26 & 27;
thence West 20 feet to the True Point of Beginning; then West 60
feet; thence South 90°30' East, 300 feet; thence East 60 feet;
thence North 90°30' West 300 feet to the True Point of Beginning.

Also a tract of land comprising the existing county road right of
way and described as follows:

Commencing at the quarter corner common to Sections 26 and
27; thence South 299 feet to the True Point of Beginning; then
West 30 feet; thence South 1021 feet, more or less, to the South
1/16 line of NE1/4 SE1/4; thence East 60 feet; thence North 1021
feet; thence West 30 feet to the True Point of Beginning.

ALSO EXCEPTING: Right of Way Deed as recorded January 24,
1934 in Book 20 of Deeds, page 392.

Parcel 4:

Township 38 North, Range 1 West, Boise Meridian, Clearwater
County, Idaho
Section 26: SW1/4 NW1/4

Excepting: A strip of land 66 feet wide, being 33 feet on each side
of the following described center line of said highway as surveyed
and shown on the official plat of the U.S. Public Works N.R.S.
Project #178 Highway Survey on file in the office of the
Department of Public Works of the State of Idaho, and lying over
and across the Southwest quarter of the Northwest quarter of
Section 26, Township 38 North, Range 1 West, Boise Meridian.

Defendants.

REPLY -2-

COMES NOW the Plaintiffs and replies to Defendant's Counterclaim as follows:

I.

Plaintiff denies the allegation contained in paragraphs 33., 34., 35., 36., 37., 38., 39., AND 40. of Defendant's Counterclaim.

II.

Plaintiff/Counterdefendant specifically denies any and all allegations not specifically admitted herein.

WHEREFORE, Plaintiff prays for a judgment pursuant to the allegations of its Complaint on file herein; that the Answer and Counterclaim of Defendant be dismissed and that it take nothing thereby; and for such other and further relief as to the Court may seem just.

DATED This 31st day of October, 2008.

CLARK AND FEENEY

By: [Signature]
Paul Thomas Clark
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of October, 2008, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Mark S. Snyder PO Box 626 Kamiah, ID 83536	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Telecopy
--	--

By: [Signature]
Attorney for Plaintiffs

REPLY -3-

CLERK-DISTRICT COURT
CLEARWATER COUNTY
ORON, IDAHO

2008 OCT 30 P 2:01

CASE NO. CV2008-392

BY RZ DATE

MARK S. SNYDER, ISB #5760
Attorney at Law
108 3rd Street
P. O. Box 626
Kamiah, ID 83536
Telephone 208-935-2001
Facsimile 208-935-7911

Attorneys for Defendants
EARL A. LAWRENCE and SANDRA L. LAWRENCE

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

FRANK RONALD MAREK and)
GAYLE MAREK, husband and wife,)
and SANDRA WORTHINGTON, a)
married woman,)

Plaintiffs,)

vs.)

EARL A. LAWRENCE and SANDRA)
L. LAWRENCE, husband and wife, and)
ROBERT C. JOHNSON, a married)
man, et al.,)

Defendants.)

CASE NO.: CV2008-392

ANSWER AND COUNTERCLAIM

COMES NOW, the above-named defendants, EARL A. LAWRENCE and SANDRA L. LAWRENECE, by and through their attorney of record, Mark S. Snyder and hereby answer the plaintiffs' complaint as follows:

ANSWER AND COUNTERCLAIM

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ORIGINAL

1. Defendants admit the allegations contained in Paragraph 1 of Plaintiffs' Complaint.
2. Defendants admit the allegations contained in Paragraph 2 of Plaintiffs' complaint.
3. Defendants admit the allegations contained in Paragraph 3 of Plaintiffs' Complaint.
4. Defendants admit the allegations contained in Paragraph 4 of Plaintiffs' complaint.
5. Paragraph 5 of Plaintiffs' complaint requires no response.
6. Defendants are without sufficient information to admit or deny the allegations contained in Paragraphs 6, 7, 9 & 10 which are legal descriptions of the properties of the parties. Defendants reserve the right to amend this answer after reviewing the accuracy of the legal descriptions.
7. See Paragraph 6, above.
8. Defendants admit the allegations contained in Paragraph 8 of Plaintiffs' complaint.
9. See Paragraph 6, above.
10. See Paragraph 6, above.
11. Defendants admit the allegations contained in Paragraph 11 of Plaintiffs' complaint.
12. Defendants admit the allegations contained in Paragraph 12, of Plaintiffs' complaint.

13. Defendants admit they purchased Section 27 property from Mary Ann Pavel.
Defendants deny that the fence erected by plaintiffs was erected with the consent of Ms. Pavel.
14. Defendants admit that they dispute the survey line is the boundary line between the parties' property. Defendants in fact did remove the fence in question without prior threat.
15. The first sentence of Paragraph 15 is admitted. The remaining allegations contained in Paragraph 15 are denied.
16. Defendants deny the allegations contained in Paragraph 16 of plaintiffs' complaint
17. Defendants deny the allegations contained in Paragraph 17 of Plaintiffs' complaint.
18. Defendants admit the allegations contained in Paragraph 18 of Plaintiffs' complaint.
19. Defendants deny the allegations contained in Paragraph 19 of Plaintiffs' complaint.
20. Defendants deny the allegations contained in Paragraph 20 of Plaintiffs' complaint.
21. Defendants deny the allegations contained in Paragraph 21 of Plaintiffs' complaint.
22. The first sentence of Paragraph 22 is admitted. The remainder of Paragraph 22 is denied.
23. Defendants deny the allegations contained in Paragraph 23 of Plaintiffs'

complaint.

24. Defendants deny the allegations contained in Paragraph 24 of Plaintiff's complaint.

25. Admitted and denied as above.

26. Defendants deny the allegations contained in Paragraph 26 of Plaintiffs' complaint.

27. Defendants deny the allegations contained in Paragraph 27 of Plaintiffs' complaint.

28. Admitted and denied as above.

29. Defendants deny the allegations contained in Paragraph 29 of Plaintiffs' complaint.

30. Defendants deny the allegations contained in Paragraph 30 of Plaintiffs' complaint.

31. Defendants deny the allegations contained in Paragraph 31 of Plaintiffs' complaint.

32. Defendants deny the allegations contained in Paragraph 32 of Plaintiffs' complaint.

AFFIRMATIVE DEFENSES

AS FIRST AFFIRMATIVE DEFENSE, plaintiffs' fail to state a claim or claims for which relief may be granted.

COUNTERCLAIM

QUIET TITLE

COMES NOW, the above-named defendants and counterclaim against the plaintiffs, as follows:

33. The location of the North/South centerline of Section 27, Township 38 North, Range 1 West, Boise Meridian, Clearwater County, Idaho, is in dispute. Plaintiffs' own property West of said centerline – the Defendants own property East of said centerline.

34. A boundary line fence, serving as the boundary between what is now the Plaintiffs' property in Section 27 and what is now the Defendants' property in Section 27 was constructed over fifty (50) years ago and existed and was maintained by the property owners on either side of the fence as the agreed boundary line, to which Plaintiffs and their predecessors in interest have acquiesced. Defendants and their predecessors have cultivated the property East of said fence line up to said fence line for several decades.

35. In the Spring of 2008 Plaintiffs and/or their agents removed the old existing boundary fence at or near the center section line of said Section 27 without prior notice or permission of the Defendants or Mary Ann Pavel. At that time, Mary Ann Pavel was the fee simple owner of the property East of said fence and the Defendants had formed a contract with Ms. Pavel to purchase said property East of the fence. As of this date, the Defendants are the fee simple owners of said property.

36. The exact location of the centerline of said Section 27 has for many decades been

uncertain, or in dispute.

37. The section line between Sections 26 and 27, Township 38 North, Range 1 West, Boise Meridian, Clearwater County, Idaho is also in dispute.
38. Three Bear Road runs parallel to and on or near said disputed line.
39. The defendants own and farm the North one-half of the Southwest Quarter of said Section 26. The plaintiffs own property in said Section 27, adjacent to and West of said Defendants' property.
40. The Defendants have occupied, paid taxes on, cultivated and otherwise used the property up to the Three Bear Road right-of-way for more than twenty (20) years prior to the filing of this action, continuously, adversely, openly and notoriously.

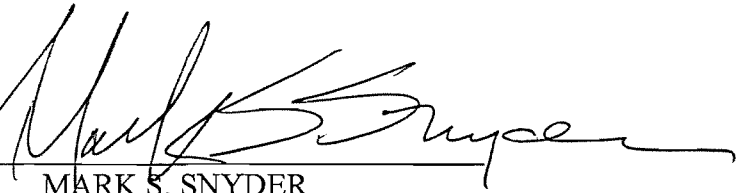
WHEREFORE, Defendants pray for judgment against the Plaintiffs as follows:

1. That Plaintiff complaint be dismissed and that they take nothing for their claims;
2. That Plaintiffs be forever barred from all claims to an estate in the premises of the Defendants described above, and that the Defendants be declared the lawful owners of a fee simple interest in said premises;
3. For an order adjudging that the old, long existing fence line on or near the center section line of said Section 27 serve as the boundary between Plaintiffs' property and Defendants' property and the Defendants are entitled to the lawful, peaceable and uninterrupted possession of said property up to the old fence line as against the Plaintiffs, all successors in interest to the Plaintiffs, and all others whomsoever.
4. For an order adjudging that the East right-of-way line of Three Bear Road, at or

near the section line between said Section 26 and said Section 27 serve as the boundary between Plaintiffs' property and Defendants' property and the Defendants are entitled to the lawful, peaceable and uninterrupted possession of said property up to the East right-of-way line of Three Bear Road as against the Plaintiffs, all successors in interest to the Plaintiffs, and all others whomsoever.

4. Defendants' costs incurred herein.
5. For such other and further relief as the court may deem just and proper.

DATED this 29th day of October, 2008.

By: 
MARK S. SNYDER
Attorney for Defendants

CERTIFICATE OF DELIVERY

I hereby certify that I caused a true and correct copy of the foregoing to be:

- ☒ mailed, postage prepaid;
- ☐ hand delivered;
- ☒ facsimile transmitted

On this 21st day of October, 2008, to:

Paul Thomas Clark
Clark & Feeney
P.O. Drawer 285
Lewiston, ID 83501

By: _____

JODY SNYDER

CARRIE BISH
CLERK-DISTRICT COURT
CLEARWATER COUNTY
GROFENO, IDAHO

2008 OCT -2 A 11:59

CASE NO. CV08-392

BY mh DEPUTY

PAUL THOMAS CLARK
Idaho State Bar No. 1329
CLARK and FEENEY
Attorneys for Plaintiff
The Train Station, Suite 201
13th and Main Streets
P. O. Drawer 285
Lewiston, Idaho 83501
Telephone: (208)743-9516

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

FRANK RONALD MAREK and GAYLE MAREK,)
husband and wife, and SANDI WORTHINGTON, a)
married woman,)

Plaintiffs,)

vs.)

EARL A. LAWRENCE and SANDRA L.)
LAWRENCE, husband and wife, and ROBERT)
C. JOHNSON, a married man, and ALL)
PERSONS UNKNOWN, CLAIMING ANY LEGAL)
OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN,)
OR INTESTATE IN THE PROPERTY SITUATE IN)
THE COUNTY OF CLEARWATER. STATE OF)
IDAHO, DESCRIBED AS FOLLOWS ADVERSE)
TO THE PLAINTIFFS' TITLE:)

Parcel 1:)

E1/2 SW1/4 OF SECTION 27, TOWNSHIP 38 NORTH,)
RANGE 1 WEST, BOISE MERIDIAN,)

EXCEPTING that portion lying North of County Road.)

EXCEPTING: the Highway Right of Way as deeded in Warranty)
Deed in Book 46 of Deeds, page 539.)

ALSO EXCEPTING: the Highway Right of Way as deeded in)
Warranty Deed in Book 46 of Deeds, page 539.)

ALSO EXCEPTING: the Highway Right of Way as deeded in)
Warranty Deed in Book 49 of Deeds, page 412.)

Case No. CV 2008-392

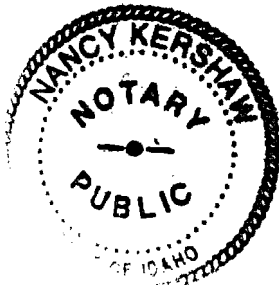
COMPLAINT

1 That he is the attorney for plaintiffs, having knowledge of the facts herein stated and makes this
2 affidavit for and on behalf of the plaintiffs; that the plaintiffs have a good and valid cause of action against
3 the defendants, which cause of action is more fully set forth in the plaintiffs' complaint on file herein; that
4 the Summons issued in this action cannot be served upon the above named defendant, **All Persons**
5 **Unknown**, within the State of Idaho, as their present whereabouts are unknown; that the plaintiffs have a
6 good and meritorious cause of action against the said defendant, and the said defendant is a necessary and
7 proper party to this action, and they cannot be served in this action other than by publication of Summons.

8 WHEREFORE, affiant prays that an order be made by this Court that Summons in this cause be
9 served upon the said Defendant, **All Persons Unknown**, by publication thereof as provided by law.

10 PAUL THOMAS CLARK

11 SUBSCRIBED AND SWORN to before me this 1st day of October, 2008.



Nancy Kershaw
NOTARY PUBLIC FOR STATE OF IDAHO

Residing at: Charleston, WA

Commission expires: 10-22-13

Parcel 2:

NW 1/4 SE1/4 OF SECTION 27, TOWNSHIP 38 NORTH,
RANGE 1 WEST, BOISE MERIDIAN

EXCEPTING all that property lying North and West of
Clearwater County Road.

Parcel 3:

NE1/4 SE1/4 of Section 27, Township 38 North, Range 1 West,
Boise Meridian, LESS Northwest of the county road.

EXCEPTING: A part of the NW1/4 SW1/4 of Section 26,
Township 38 North, Range 1 West, Boise Meridian and the part
of the NE1/4 SE1/4 of Section 27, Township 38 North, Range 1
West, Boise Meridian, Clearwater County, Idaho, and more
particularly described as:

Commencing at the 1/4 corner common to Sections 26 & 27;
thence West 20 feet to the True Point of Beginning; then West 60
feet; thence South 90°30' East, 300 feet; thence East 60 feet;
thence North 90°30' West 300 feet to the True Point of Beginning.

Also a tract of land comprising the existing county road right of
way and described as follows:

Commencing at the quarter corner common to Sections 26 and
27; thence South 299 feet to the True Point of Beginning; then
West 30 feet; thence South 1021 feet, more or less, to the South
1/16 line of NE1/4 SE1/4; thence East 60 feet; thence North 1021
feet; thence West 30 feet to the True Point of Beginning.

ALSO EXCEPTING: Right of Way Deed as recorded January 24,
1934 in Book 20 of Deeds, page 392.

Parcel 4:

Township 38 North, Range 1 West, Boise Meridian, Clearwater
County, Idaho
Section 26: SW1/4 NW1/4

Excepting: A strip of land 66 feet wide, being 33 feet on each side
of the following described center line of said highway as surveyed
and shown on the official plat of the U.S. Public Works N.R.S.
Project #178 Highway Survey on file in the office of the
Department of Public Works of the State of Idaho, and lying over
and across the Southwest quarter of the Northwest quarter of
Section 26, Township 38 North, Range 1 West, Boise Meridian.

Defendants.

COME NOW the Plaintiffs and for cause of action against the Defendants, complain and
allege as follows:

COMPLAINT -2-

I.

INTRODUCTION

This Complaint seeks declaratory relief as well as a claim for trespass, conversion and attorney fees. The underlying subject matter of this Complaint is real property owned by the Plaintiffs and adjacent real property owned by the Defendants located in Clearwater County, State of Idaho. There are two boundaries disputes at issue in this case, both regarding the same parties. For ease of reference one boundary dispute will be identified as SECTION 27 DISPUTE while the other boundary dispute will be identified as THREE BEAR ROAD DISPUTE.

II.

PARTIES

1. Plaintiffs Frank Ronald Marek and Gayle Marek (a/k/a Altha Gayle Marek and a/k/a A. Gayle Marek) are husband and wife.

2. Plaintiff Sandi Worthington is a married woman dealing with her sole and separate property.

3. Defendants Earl A. Lawrence and Sandra L. Lawrence are husband and wife.

4. Defendant Robert C. Johnson is a married man dealing with his sole and separate property.

5. That Plaintiffs do not know the true names of Defendants All Persons Unknown, Claiming Any Legal or Equitable Right, Title, Estate, Lien, or Intestate in the Property Described in the Complaint Adverse to Plaintiffs' Title, and therefore sue them by that fictitious name. The names, capacities, and relationships of such Defendants will be alleged by amendment to this Complaint when the same are known.

III.

REAL PROPERTIES

SECTION 27 DISPUTE

6. Plaintiff Gayle Marek is the owner of certain real property situate in the County of Clearwater, State of Idaho more particularly described as follows:

E1/2 SW1/4 OF SECTION 27, TOWNSHIP 38 NORTH, RANGE 1 WEST, BOISE MERIDIAN,

EXCEPTING that portion lying North of County Road.

EXCEPTING: the Highway Right of Way as deeded in Warranty Deed in Book 46 of Deeds, page 539.

ALSO EXCEPTING: the Highway Right of Way as deeded in Warranty Deed in Book 46 of Deeds, page 539.

ALSO EXCEPTING: the Highway Right of Way as deeded in Warranty Deed in Book 49 of Deeds, page 412.

and the Plaintiff Gayle Marek and Plaintiff Sandi Worthington are the owners of certain real property situate in the County of Clearwater, State of Idaho more particularly described as follows:

NW 1/4 SE1/4 OF SECTION 27, TOWNSHIP 38 NORTH, RANGE 1 WEST, BOISE MERIDIAN

EXCEPTING all that property lying North and West of Clearwater County Road.

7. Defendants Earl A. Lawrence and Sandra L. Lawrence are the owners of certain real property situate in the County of Clearwater, State of Idaho more particularly described as follows:

S1/2 SE1/4 OF SECTION 27, TOWNSHIP 38 NORTH, RANGE 1 WEST, BOISE MERIDIAN

EXCEPTING right of way of State Highway No. 7 as deeded in Book 20 of Deeds, page 243, Book 39 of Deeds, page 241 and Book 48 of Deeds, page 385.

8. The real properties listed in paragraph 6 and in paragraph 7 are adjacent and share a common boundary.

THREE BEAR ROAD DISPUTE

9. Plaintiffs are the owners of certain real property situate in the County of Clearwater, State of Idaho more particularly described as follows:

NE1/4 SE1/4 of Section 27, Township 38 North, Range 1 West, Boise Meridian, LESS Northwest of the county road.

EXCEPTING: A part of the NW1/4 SW1/4 of Section 26, Township 38 North, Range 1 West, Boise Meridian and the part of the NE1/4 SE1/4 of Section 27, Township 38 North, Range 1 West, Boise Meridian, Clearwater County, Idaho, and more particularly described as:

Commencing at the 1/4 corner common to Sections 26 & 27; thence West 20 feet to the True Point of Beginning; then West 60 feet; thence South 90°30' East, 300 feet; thence East 60 feet; thence North 90°30' West 300 feet to the True Point of Beginning.

Also a tract of land comprising the existing county road right of way and described as follows:

Commencing at the quarter corner common to Sections 26 and 27; thence South 299 feet to the True Point of Beginning; then West 30 feet; thence South 1021 feet, more or less, to the South 1/16 line of NE1/4 SE1/4; thence East 60 feet; thence North 1021 feet; thence West 30 feet to the True Point of Beginning.

ALSO EXCEPTING: Right of Way Deed as recorded January 24, 1934 in Book 20 of Deeds, page 392.

and the Plaintiff Gayle Marek is the owner of certain real property situate in the County of Clearwater, State of Idaho more particularly described as follows:

Township 38 North, Range 1 West, Boise Meridian, Clearwater County, Idaho
Section 26: SW1/4 NW1/4

Excepting: A strip of land 66 feet wide, being 33 feet on each side of the following described center line of said highway as surveyed and shown on the official plat of the U.S. Public Works N.R.S. Project #178 Highway Survey on file in the office of the Department of Public Works of the State of Idaho, and lying over and across the Southwest quarter of the Northwest quarter of Section 26, Township 38 North, Range 1 West, Boise Meridian.

10. Defendants are the owners of certain real property situate in the County of Clearwater,

State of Idaho more particularly described as follows:

Township 38 North, Range 1 West, Boise Meridian, Clearwater County, Idaho
Section 26: NW1/4 SW1/4

Excepting: A part of the NW1/4 SW1/4 of Section 26, Township 38 North, Range 1 West, Boise Meridian, and part of the NE1/4 SE1/4 of Section 27, Township 38 North, Range 1 West, Boise Meridian, Clearwater County, Idaho and more particularly described as follows:

Commencing at the quarter corner common to Sections 26 and 27; thence West 20 feet to the True Point of Beginning; thence West 60 feet; thence South 90°30' East 30 feet; thence East 60 feet; thence North 90°30' West 300 feet to the True Point of Beginning.

Also Excepting: A tract of land compromising the existing county road right of way and described as follows:

Commencing at the quarter corner common to Sections 26 and 27; thence South 299 feet to the True Point of Beginning; thence West 30 feet; thence South 1021 feet, more or less to the South 1/16 line of NE1/4 SE1/4; thence East 60 feet; thence North 1021 feet; thence West 30 feet to the True Point of Beginning.

11. The real properties listed in paragraph 9 and in paragraph 10 are adjacent and share a common boundary.

IV.

DECLARATORY JUDGEMENT FOR SECTION 27 DISPUTE

12. Plaintiffs' and Defendants' Section 27 properties are adjacent to each other and share a common boundary. The location of this boundary is in dispute.

13. Defendants Earl A. Lawrence and Sandra L. Lawrence purchased their Section 27 property from Mary Ann Pavel. Prior to the Defendants purchase of Defendants' Section 27 property, Plaintiffs had the property line surveyed. After the survey, with the consent of Ms. Pavel, the Plaintiffs erected a fence along the surveyed line.

14. Defendants Earl A. Lawrence and Sandra L. Lawrence have disputed the survey line
1 as the boundary line between the parties property, and have refused to treat the survey line as the
2 boundary. Further, Defendants have threatened to tear down the fence that marks the survey line of
3 the adjoining properties.

15. All of the above named Defendants, known and unknown, claim an interest in the
5 property adverse to plaintiff's undivided fee simple interest in said real property. Defendants' claims
6 are without any right whatever and defendants have no right, estate, title, lien or interest in or to
7 plaintiffs' undivided interest in fee simple to said property, or any part thereof.

16. The above described claims of the Defendants constitute a cloud on Plaintiffs' title
9 and prevent Plaintiffs from the complete enjoyment and use of said property

17. The Court should declare that the survey line is the boundary line of the parties
12 Section 27 property and declare Plaintiffs as the owner in fee of the premises in question to the
13 exclusion of the Defendants. Further, the Court should issue a permanent injunction enjoining
14 Defendants from interfering with Plaintiffs use of the aforementioned property and restraining them
15 from removing the fence and any survey markers.

17 V.

18 DECLARATORY JUDGEMENT FOR THREE BEAR ROAD DISPUTE

19 18. Plaintiffs' and Defendants' Three Bear Road Property share a common boundary.
20 The location of this boundary is in dispute.

21 19. A survey marker appears to indicate that the boundary line on Plaintiffs' Three Bear
22 Road property lies east of the Three Bear Road.
23
24
25
26

20. Defendants use their Three Bear Road Property as farm ground. In the last few years they have ignored the survey marker and farmed the real property up to the county road, thereby farming a portion of Plaintiffs' property without permission. Defendant Earl Lawrence has attempted to destroy the survey marker to cloud the boundary of the parties Three Bear Road property.

21. Plaintiffs have attempted to have the boundary line dividing the parties property surveyed. Defendants have threatened to pull up and destroy any survey stakes the Plaintiffs pay to have put in.

22. All of the above named Defendants, known and unknown, claim an interest in the property adverse to Plaintiff's undivided fee simple interest in said real property. Defendants' claims are without any right whatever and Defendants have no right, estate, title, lien or interest in or to Plaintiffs' undivided interest in fee simple to said property, or any part thereof.

23. The above described claims of the Defendants constitute a cloud on Plaintiffs' title and prevent Plaintiffs from the complete enjoyment and use of said property

24. The Court should declare that the survey marker is the boundary line of the parties Three Bear Road property and declare Plaintiffs as the owner in fee of the premises in question to the exclusion of the Defendants. Further, the Court should issue a permanent injunction enjoining Defendants from interfering with Plaintiffs use of the aforementioned property and restraining them from removing the survey marker and continuing to farm on Plaintiffs' property.

VI.

TRESPASS

25. Plaintiffs reallege all foregoing allegations.

26. Defendants and their agents, and employees, knowingly entered onto Plaintiffs' land, and without legal right and without the Plaintiffs' knowledge or consent, willfully and intentionally seeded and cultivated on Plaintiffs' land.

27. By reason of the above acts, Plaintiffs sustained both general and special damages.

VII.

CONVERSION

28. Plaintiffs reallege all foregoing allegations.

29. Defendants have wrongfully entered on Plaintiffs' premises, without authority, and unlawfully removed, carried away and converted to their own use a Powder River fence panel and no trespass sign on Plaintiffs' property.

30. The Powder River Fence panel and no trespass sign unlawfully removed by the Defendants had a value which will be proven at trial.

31. By reason of the above acts, Plaintiffs sustained damages in an amount to be proven at trial.

VIII

ATTORNEY FEES

32. As a further and direct consequence of Defendants' actions, the Plaintiffs have been required to retain Paul Thomas Clark of the law firm of CLARK and FEENEY, to prosecute this action. Plaintiffs are entitled to recover their costs and fees in this matter pursuant to Idaho Code §12-121.

IX.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for relief and for judgment against the Defendants as follows:

1. For an order restraining Defendants and their agents, servants, employees, guests, invitees and others acting under their direction and authority during the pendency of this action, and thereafter permanently, from entering Plaintiffs' premises and from interfering in any way with Plaintiffs' possession, use and enjoyment of the property;

2. For judgment against the Defendants on all causes of action alleged herein in an amount to be proven at trial, which amount is expected to well exceed \$10,000.00;


3. That the Court adjudge and decree that Plaintiffs are the owners in fee of the real property and that Plaintiffs are in possession and entitled to possession of the real property, and retain jurisdiction to enforce the decree.

4. For an award of reasonable attorney fees and costs necessarily incurred in this action.

5. For such other and further relief as the Court deems reasonable and just.

DATED This 15th day of October ~~September~~, 2008.

CLARK AND FEENEY

By: 
Paul Thomas Clark
Attorney for Plaintiffs

STATE OF IDAHO)

) ss.

County of Nez Perce)

FRANK MAREK, being first duly sworn on oath, deposes and says:

That he is one of the Plaintiffs above named, that he has read the foregoing complaint, and the contents thereof and the facts stated therein are true to the best of her knowledge, information and belief.

Frank Marek

FRANK MAREK

SUBSCRIBED and SWORN to before me, this 30th day of September, 2008.



Sherry L. Roberts

Notary Public in and for the State of Idaho
Residing at Lewiston, therein.

My commission expires 10/20/09

STATE OF IDAHO)

) ss.

County of Nez Perce)

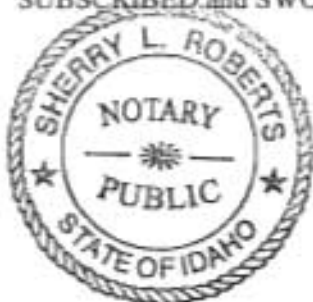
GAYLE MAREK, being first duly sworn on oath, deposes and says:

That she is one of the Plaintiffs above named, that she has read the foregoing complaint, and the contents thereof and the facts stated therein are true to the best of her knowledge, information and belief.

Gayle Marek

GAYLE MAREK

SUBSCRIBED and SWORN to before me, this 30th day of September, 2008.



Sherry L. Roberts

Notary Public in and for the State of Idaho
Residing at Lewiston, therein.

My commission expires 10/20/09